INTERNATIONAL MECHANISMS AND STANDARDS TO PREVENT MONEY LAUNDERING AND GLOBAL TERRORISM FINANCING THROUGH OFFSHORE JURISDICTIONS UNDER THE PRISM OF FISCAL EFFICIENCY

Luísa Hoff Portieri Pignatti

Career Focused Master's Programme in Financial and Tax Law

University of Lisbon School of Law

Prof. Dr. Carlos Manuel Baptista Lobo

2019

Acknowledgements

I would like to express my sincere gratitude to my thesis advisor, Prof. Dr. Carlos Lobo, of the School of Law of the University of Lisbon, whom as my teacher and mentor has provided the indispensable inspiration through his classes and insightful guidance in the development of this challenging work.

In particular, I wish to express my profound thankfulness to my beloved parents Mario and Delci, my sister and role model Luciana and my adored nieces Victoria and Catarina for providing me with unfailing support and continuous encouragement for me to follow my dreams, no matter where they would take me. This accomplishment would not have occurred without you.

Nobody has been more important to me in the pursuit of this project than my husband Mauricio. Thank you for being my life partner, best friend and safe harbour – without you, absolutely nothing would be possible. Sharing all these moments by your side is living the dream of a complete life. I would like to thank my second father Antonio as well for all the love, thoughtfulness and for always granting the wisest words.

Finally, I am most grateful to the School of Law of the University of Lisbon and Professors for passing on their immense knowledge and the unique opportunity of being part of this outstanding institution.

Abstract

In the financial arena, the era of globalization has brought countless advances to the economies, providing growth, job creation and expanding international markets. On the other hand, it has carried out detrimental consequences, such as the internationalization of financial vulnerabilities for organized crime to accomplish their undertakings. Whereas different concerns, money laundering and terrorist financing often explore the same loopholes to perform their activities, either because of the anonymity, obscurity or opacity required for the achievement of their ends. Tax havens play an important role on such times: by offering a no or low levy and a weak regulation environment, they entice a great volume of non-resident financial activities and provide the perfect spot not just to avoid taxation, but as well as take in illegitimate capital flows connected to criminal endeavours. Such financial refuges enable illegal activities to take place by granting the indispensable secrecy and confidentiality to individuals and companies to achieve their unlawful agenda, frequently behind layers of complex business structures. The misappropriation of the financial system to conduit illicit or even licit schedules as to produce money laundering and terrorist funding unavoidably imperils the world society and its welfare. Bearing in mind that engagements of illegitimate capital may harm the trustworthiness, soundness and confidence of the financial institutions as a whole and that money laundering and terrorist financing performances are persistently completed on an international environment, the effort to battle them must be global. On that account, the present study aspires to uncover the linkage between the failures provided by offshore jurisdictions in terms of fiscal efficiency that further allow the upsurge and propagation of such harmful attempts. In order to provide an enrichment of existing international mechanisms and standards, to enhance strategies that consistently deliver transparency, address challenges and track solutions must be accomplished in a joint and worldwide scale.

Keywords: AML / CFT; money laundering; terrorism financing; offshore financial centres; fiscal efficiency.

Resumo

Na arena financeira, a era da globalização trouxe inúmeros avanços para as economias, proporcionando crescimento, criação de empregos e expansão dos mercados internacionais. Por outro lado, tem levado a consequências prejudiciais, como a internacionalização das vulnerabilidades financeiras para o crime organizado realizar seus empreendimentos. Ainda que preocupações distintas, a lavagem de dinheiro (branqueamento de capitais) e o financiamento do terrorismo frequentemente exploram as mesmas lacunas para realizar suas atividades, seja por causa do anonimato, da obscuridade ou da opacidade exigida para a realização de seus fins. Os paraísos fiscais desempenham um papel importante em tais tempos: ao oferecer um imposto mínimo ou nulo e um ambiente regulatório fraco, atraem um grande volume de atividades financeiras de não residentes e constituem o local perfeito não apenas para evitar a tributação, mas também receber fluxos ilegítimos de capital ligados a atividades criminais. Tais refúgios financeiros permitem que atividades ilícitas ocorram, garantindo o sigilo e a confidencialidade indispensáveis a indivíduos e empresas para cumprir sua agenda ilegal, muitas vezes por trás de camadas de estruturas empresariais complexas. A utilização danosa do sistema financeiro para conduzir cronogramas ilícitos ou até mesmo lícitos para produzir lavagem de dinheiro e financiamento do terrorismo inevitavelmente coloca em risco a sociedade mundial e seu bem-estar. Tendo em conta que o emprego de capital ilegítimo pode prejudicar a confiabilidade, solidez e fidúcia das instituições financeiras como um todo e que os comportamentos de lavagem de dinheiro e financiamento do terrorismo são persistentemente concluídos em um ambiente internacional, o esforço para combatê-los deve ser global. Nesse sentido, o presente estudo pretende revelar a ligação entre as falhas fornecidas pelas jurisdições offshore em termos de eficiência fiscal que permitem o aumento e a propagação de tais ocorrências prejudiciais. A fim de proporcionar o enriquecimento dos mecanismos e padrões internacionais existentes, o aprimoramento de estratégias que consistentemente forneçam transparência, abordem os desafios e viabilizem soluções deve ser realizado em escala conjunta e mundial.

Palavras-chave*: AML / CFT; lavagem de dinheiro (branqueamento de capitais); financiamento do terrorismo; centros financeiros offshore; eficiência fiscal.*

Resumo

Considerada a fase mais sofisticada do capitalismo, a era da globalização trouxe avanços incomensuráveis para as economias, proporcionando crescimento, criação de empregos, gerando retornos de capital e expandindo os mercados internacionais. Não obstante o século XXI ter fornecido inúmeras inovações e progressos tecnológicos, graves desigualdades econômicas e sociais elevaram o alerta de que algo resultou criticamente errado no arranjo financeiro mundial, levando a cabo consequências negativas e agravando as falhas de mercado.

Como protagonista estratégico dessa questão, os Centros Financeiros *Offshores* são jurisdições que magnetizam uma grande quantidade de empreendimentos financeiros de não residentes, proporcionando fáceis movimentos financeiros, ao prometer pouca ou nenhuma tributação e regulamentação, ocultação e sigilo para permitir o fluxo livre de capital. Ao facilitar a crescente mobilidade das receitas, as políticas dos Centros Financeiros *Offshores* oferecem o lugar perfeito não apenas para evitar a tributação, mas também os as transações de capitais ilícitos ligados a atividades criminosas, como branqueamento de capitais e financiamento do terrorismo.

Em um panorama amplo, o branqueamento de capitais pode ser descrito como a tentativa de camuflar a fonte ilícita de dinheiro advindo de atividades criminosas para então assimilá-lo em sistemas financeiros legítimos de tal maneira que ele não possa ser distinguidos de ativos adquiridos por meios legítimos – em outras palavras, é o ato de branquear recursos gerados por atividades criminosas para obscurecer a conexão entre os fundos e suas origens ilegais com o objetivo de evitar a prossecução legal. O processo de branqueamento de capitais é, além disso, descrito como o meio de vida através do qual organizações criminosas realizam suas atividades, permitindo que figuras ilegais, como corruptos e evasores de impostos possam desfrutar pacificamente dos benefícios de seus crimes.

Por outro lado, o financiamento global do terrorismo é a prática que sustenta os rendimentos financeiros para financiar atividades terroristas. É bem sabido que os ataques de 11 de setembro marcaram o ponto de virada na história mundial e o início da chamada Guerra ao Terror, que foi seguida por incontáveis eventos terroristas em todo o mundo. A cooperação reforçada entre os países melhorou as medidas para prevenir ou limitar os impactos das ocorrências de terrorismo. Abordar a gênese do levantamento de fundos para fins terroristas –

que podem ser fornecidos por fontes legais ou ilegais – representa a chave para desabilitar esse tipo de agenda ilegal.

Apesar de temas diferentes, o branqueamento de capitais e o financiamento do terrorismo frequentemente exploram as mesmas lacunas para identificar formas de prosperar suas atividades, seja por causa do anonimato, obscuridade ou opacidade exigida para a realização dessas transações. Nesse sentido, os paraísos fiscais facilitam os crimes financeiros (por exemplo, branqueamento de capitais, financiamento do terrorismo e evasão fiscal), fornecendo o sigilo necessário a indivíduos e empresas para cumprir sua agenda ocultando as informações de sua real identidade por trás das camadas de estruturas empresariais complexas.

Alguns entes corporativos – principalmente *trusts*, empresas-fantasmas, parcerias, *holdings*, fundações e outras corporações com características de responsabilidade reduzida – executam uma ampla variedade de atividades empresariais e representam a base para uma gama abrangente de negócios em economias baseadas no mercado internacional. Não obstante as ocupações imperativas e válidas que conduzem na economia mundial, há um evidente estigma relacionado aos Centros Financeiros *Offshore*, uma vez que eles são implicados em esquemas de branqueamento de capitais e outros engajamentos ilícitos por esconder e transferir empreendimentos criminosos para permitir que tais lucros sejam obtidos e após retornar ao sistema financeiro como se legítimos fossem.

Neste cenário, a apropriação indevida do sistema financeiro para conduzir itinerários ilegais ou mesmo legítimos para produzir branqueamento de capitais e o financiamento do terrorismo inevitavelmente ameaça a confiabilidade, a operacionalidade e a solidez da rede internacional. Considerando que arranjos de dinheiro ilícito podem prejudicar a confiabilidade, solidez e fidúcia das instituições financeiras como um todo e que os comportamentos de branqueamento de capitais e financiamento do terrorismo são recorrentemente realizados em um ambiente internacional, o esforço para combatê-los deve ser global.

Com base nessas premissas, o presente estudo tem como objetivo expor a ligação entre as lacunas proporcionados pelas jurisdições *offshore* em termos de eficiência fiscal que possibilitem o aumento e a proliferação de tais crimes financeiros, a fim de fornecer enriquecimento aos atuais mecanismos e padrões internacionais.

Em tais esforços, é de suma importância o papel desempenhado pelas jurisdições e organizações, especialmente pela Organização para a Cooperação e o Desenvolvimento

Económico (OCDE), o Grupo de Acção Financeira Internacional (GAFI) e os órgãos da União Europeia (União Europeia), que devem continuar a considerar as mudanças nos padrões, à luz de novas configurações emergentes com relação ao surgimento de novas ameaças e vulnerabilidades ao sistema financeiro global. A globalização torna necessário fortalecer a assistência mútua e a troca de informações entre Estados, a fim de evitar os efeitos negativos do aumento do fluxo livre e sem vigilância de capitais no mercado internacional.

Em mais uma avaliação, uma questão permanece factual: a regulação contra branqueamento de capitais e o financiamento do terrorismo tornou-se a pedra angular de um cronograma mais denso para combater as atividades criminosas, negando aos infratores as compensações ilícitas e perseguindo administrativa e judicialmente aqueles que ajudam a realizar tais comportamentos. O reforço de aplicação da lei também desempenha um papel decisivo na obstrução da criminalidade, uma vez que a remoção do incentivo financeiro para cometer delitos com o rastreamento, congelamento e confiscação dos lucros é crucial para reduzir a possibilidade financeira dos criminosos.

Um dos principais desafios que devem ser abordados reside especificamente nas diferentes discrepâncias de regulamentação entre os países, que, como consequência, proporcionam um meio frágil e tolerem que atividades ilícitas ocorram, se não sob os olhares domésticos, em jurisdições *offshores* que o permitam. Um padrão mínimo e uniforme, apesar das diferenças legislativas entre as nações, como já está começando a ser estabelecido por organizações mundiais é, portanto, essencial para proporcionar uma mínima estabilidade do sistema financeiro como um todo.

O papel desempenhado pelos paraísos fiscais sofreria consideráveis danos se a transparência financeira se tornasse um padrão inescapável e unificado. A partir desta perspectiva, a transparência financeira internacional é uma questão crucial para que o Estado fiscal moderno seja capaz de produzir mudanças substanciais e irrevogáveis. Para combater o terrorismo e o branqueamento de bens, é essencial dispor de um intercâmbio de informações ideal e de dados precisos, a fim de permitir a desconstrução da agenda da criminalidade organizada.

Com esse conhecimento em mente, é importante notar que as nações sozinhas não possuem a autossuficiência e capacidade de combater inteiramente e efetivamente as ações prejudiciais decorrentes da globalização, que podem e serão melhor alcançadas em nível global. O desenvolvimento e o aprimoramento de regulamentações mais severas são necessários, até mesmo indispensáveis, mas seria inócuo acreditar que seriam facilmente aceito, pois a maioria dos países dificilmente aceitariam sem sanções.

Apesar do facto de não ser claro se os valores de referência já adoptados por organismos internacionais como o GAFI, o Fundo Monetário Internacional (FMI), a OCDE e a UE resultarão em resultados eficazes, é decisivo buscar esforços conjuntamente para procurar um justo, eficiente e, acima de tudo, transparente arranjo internacional.

Eleitos entre as principais preocupações da Agenda Europeia de Segurança, prevenir e combater o branqueamento de capitais e o financiamento do terrorismo são cruciais e suas ameaças progressivas devem ser acompanhadas por rápidas evoluções em relação às regulamentações contra seus efeitos, principalmente aquelas que aumentam os mecanismos de transparência no campo da troca de informações.

A informação financeira é o ativo mais importante e estratégico no combate ao branqueamento de capitais, ao financiamento do terrorismo e à contenda de ofensas severas em uma perspectiva mais ampla. Levando em conta o fato de que os branqueadores de capital, terroristas e outros infratores da lei realizam suas irregularidades em todo o mundo, principalmente pela transferência de renda ilegal de uma jurisdição para outra, explorando ambientes legislativos fracos, é imperativa a informação financeira para lidar com essa variedade de performances prejudiciais em um mundo interconectado.

Neste sentido, o alargamento da troca de informações a pedido (EoIR) e a introdução do Intercâmbio Automático de Informação (AEoI) marcaram uma mudança radical na transparência fiscal e na capacidade de as administrações fiscais combaterem as actividades *offshore* e, consequentemente, os esforços subsistentes de branqueamento de capitais e financiamento de terrorismo.

No panorama mundial, é claramente perceptível que não será possível esgotar os riscos do branqueamento de capitais e do financiamento do terrorismo, à medida que novas estruturas surgem todos os dias, explorando diferentes fragilidades e violações dos sistemas financeiros. Aperfeiçoar a transparência, enfrentar desafios e acompanhar com persistência as soluções globalmente é decisivo para que os esforços do crime organizado não se tornem uma característica permanente e arraigada de um processo de globalização que apenas promova a desigualdade, mas também proporcione uma concorrência mais justa em um ambiente financeiro sólido e confiável, sob o prisma da eficiência fiscal.

List of Abbreviations

AEoI	Automatic Exchange of Information
AML	Anti-Money Laundering
BEPS	Base Erosion and Profit Shifting
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism or Combating the Financing of Terrorism
CRS	Common Reporting Standard
CTC	Counter-Terrorism Committee
DNFBP	Designated Non-Financial Business and Profession
DTA	Double Taxation Agreement
EC	European Council
ECB	European Central Bank
ECOFIN	Economic and Financial Affairs Council
EEC	European Economic Community
EoIR	Exchange of Information on Request
EP	European Parliament
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FATF	Financial Action Task Force
FDI	Foreign Direct Investments

FIU	Financial Intelligence Unit
FSI	Financial Secrecy Index
G20	Group of Twenty
G7	Group of Seven
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
HNWI	High-Net-Worth Individual
IBC	International Business Company or Corporation
ICIJ	International Consortium of Investigative Journalists
IMF	International Monetary Fund
IRS	Internal Revenue Service
ISIL	Islamic State in Iraq and the Levant
JHA	Justice and Home Affairs Council
KYC	Know Your Client / Customer
MAC	Multilateral Convention on Mutual Administrative Assistance
ML	Money Laundering
MLI	Multilateral Instrument
MNC	Multinational Company or Corporation
MNE	Multinational Enterprise
NCCT	Non-Cooperative Countries and Territories
NPI	Non-Profit Institution

NPO	Non-Profit Organisations
OECD	Organisation for Economic Co-Operation and Development
OFC	Offshore Financial Centre / Center
OJ	Official Journal of the European Union
PEP	Politically Exposed Person
PNR	Passenger Name Record
RBA	Risk-Based Approach
RES	Resolution
SPE	Special Purpose Entity
SPV	Special Purpose Vehicle
STR	Suspicious Transaction Report
TEU	Treaty of the European Union
TF	Terrorist / Terrorism Financing
TFEU	Treaty on the Functioning of the European Union
TJN	Tax Justice Network
TPB	Terrorism Prevention Branch
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNODC	UN Office for Drug Control and Crime Prevention
USA / US	United States of America

CONTENTS

PART I

INTRODUCTION

CHAPTER 1 – A GENERAL INTRODUCTION

During 1st century AD in the ancient Roman empire, urine was largely used as a cleaning agent for washing clothes, for brushing teeth and as well as tanning leather, due to its main component ammonia. Eventually, so much urine was used and collected in the empire that a tax was imposed by Roman emperor Vespasian (AD 69–79), creating what was known as the *vectigal urinae*, which translates from Latin into urine tax[1]. This practice gave birth to the Vespasian's most famous Latin adage *Pecunia non olet*[2], which self-evident connotation was to illustrate that money, and therefore its due taxation, is never to be stained despite its geneses[3].

Considered to be the most sophisticated stage of capitalism, the era of globalization has brought immeasurable advances to the economies, providing growth, job creation and generating capital returns by expanding international markets. Nonetheless the 21st century has provided countless innovations and technological progresses, severe economic and social inequalities upraised the alertness that something critically went wrong in the worldwide financial arrangement, with the appearance of detrimental consequences and the aggravation of market failures.[4]

As a strategic protagonist of this edge, Offshore Financial Centres (OFCs)[5] are jurisdictions that magnetize a great amount of non-resident financial endeavours, providing

[1] Beard, Mary (2015), *SPQR: A history of ancient Rome*, London: Profile Books, p. 393.
[2] In the first volume of the Capital, Karl Marx uses *non olet* to explain the detachment of the commodities origins observing that "*Since every commodity, on becoming money, disappears as a commodity, it is impossible to tell from the money itself, how it got into the hands of its possessor, or what article has been changed into it. Non olet, from whatever source it may come*." Marx, Karl (1990), *Capital*, Volume 1, Penguin Books, London, p. 205.
[3] This axiom remains nowadays most frequently associated to describe illegal sources of financial gains, particularly when unfolding resources for criminal activities that need detachment of their final outcome.
[4] Piketty, Thomas (2014), *Capital in the Twenty-First Century*, Cambridge Massachusetts: The Belknap Press of Harvard University Press.
[5] According to the OECD glossary database, Retrieved from: https://stats.oecd.org/glossary/, Offshore Financial Centres are defined as "*countries or jurisdictions with financial centres that contain financial institutions that deal primarily with nonresidents and / or in foreign currency on a scale out of proportion to the size of the host economy. Nonresident-owned or -controlled institutions play a significant role within the centre. The institutions in the centre may well gain from tax benefits not*

effortless movements of assets by promising no or low tax and regulation, concealment and secrecy to enable free capital flow. By facilitating the growing mobility of revenues, OFCs policies deliver the perfect spot not just to avoid taxation, but as well as illicit financial transactions connected to criminal activities, such as money laundering and the financing of terrorism.[6]

In a wide-ranging landscape, money laundering can be described as the attempt to camouflage illicit sources of wealth generated from criminal activities in order to subsequently assimilate them into legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means[7] – in other words, the act to wash resources produced by criminal activity as to obscure the connection between the funds and their illegal origins for the purpose of avoiding legal enforcement[8]. The money laundering process is furthermore depicted as the lifeline means through which criminal organisations carry out their activities, by allowing illegal performers such as corrupt and tax evaders to peacefully relish the benefits of their crimes[9].

On the other hand, global terrorism financing is the practice that supports financial incomes in order to fund terrorist activities. It is well known that the attacks of 9/11 marked the turning point in world history and the beginning of the so-called War on Terror, which was followed by countless terrorists events across the world. The reinforced cooperation between countries has improved the measures to prevent or limit terrorism occurrences impacts. To tackle the geneses of the funding raise for terrorist purposes – which can be provided by either legal or illegal sources[10] – represents the key to disable these sorts of unlawful agenda.

---

available to those outside the centre." See further at: International Monetary Fund (2003), *External Debt Statistics: Guide for Compilers and Users* – Appendix III, Glossary, Washington DC: IMF.

[6] Sikka, Prem (2003), *The Role of Offshore Financial Centres in Globalization*, Accounting Forum, Vol. 27, pp. 365-399, Retrieved from http://www.taxjustice.net/cms/upload/pdf/WP03-02.pdf

[7] Unger, Brigitte and Van der Linde, Daan (2013), *Research Handbook on Money Laundering*, Elgar Original Reference, pp. 3-16.

[8] McClean, David (2002), *International Cooperation in Civil and Criminal Matters*, Oxford: Oxford University Press, p. 261.

[9] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, pp. 553–598, Retrieved from: https://ssrn.com/abstract=3287423

[10] As in Spahiu, Naim; Bajraktari, Halim and Shterbani, Shefki (2016), *Terrorism as a Threat and Challenge of Peace and Security in 21st Century*, Proceedings of the International Scientific Conference 'Contemporary Concepts of Crisis Management', Retrieved from: https://ssrn.com/abstract=3307341, terrorist factions progressively advance their activities fund throughout an arrangement of charitable and humanitarian organisations, criminal businesses, front companies, dark profitmaking deals, illegal and weak regulated banking systems.

Whereas completely different matters, money laundering and terrorist financing often explore the same loopholes in order to identify ways to thrive its activities, either because of the anonymity, obscurity or opacity required for the accomplishment of those transactions.[11] For these endeavours, it has been made clear that tax havens facilitate financial crimes (for example money laundering, terrorist financing and tax evasion), by providing the necessary secrecy to individuals and companies to perform their harmful agenda through the concealment of the true ownership information behind layers of complex business structures.

Some corporate beings – mainly trusts, shell companies, partnerships, holdings, foundations and other corporations with reduced liability features – perform a widespread assortment of entrepreneurial activities and represent the foundation for a comprehensive array of businesses in market-based economies. Notwithstanding the imperative and valid occupations they conduct in the system, there is an evident stigma related to OFCs, since they are alleged to be convoluted in money laundering schemes and other illicit engagements by camouflaging and shifting criminal undertakings as to enable such profits to be interleaved back in the economy as legitimate.[12]

In this scenario, the misappropriation of the financial system to conduit unlawful or even legitimate itineraries as to produce money laundering and terrorist funding stage an inescapably threaten to the reliability, operationality and solidity of the international network.

Considering that arrangements of illicit money may harm the trustworthiness, soundness and confidence of the financial institutions as a whole[13] and that money laundering

---

[11] According to the International Monetary Fund, money laundering and terrorist financing constitute a threat to the stability of the financial sector and the broader economy. It is so for these illicit activities provide discouragement of foreign investment and distort international capital flows, resulting in welfare losses, the drain of resources from productive economic activities, and even produce destabilizing effects on other countries. In an increasingly interconnected world, the harm done by these activities is global. See further at https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism

[12] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, Luxembourg: Publications Office of the European Union, Retrieved from https://ec.europa.eu/eurostat/documents/3859598/8714610/KS-05-17-202-EN-N.pdf/eaf638df-17dc-47a1-9ab7-fe68476100ec

[13] Recital (1) of the Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73–117, In force, Retrieved from http://data.europa.eu/eli/dir/2015/849/oj, Hereinafter: Fourth AML / CFT Directive.

and terrorist financing behaviours are recurrently carried out in an international environment, the effort to fight them must be global[14].

On these grounds, the present study aims to expound the link between the failures provided by offshore jurisdictions in terms of fiscal efficiency that further enable the increase and proliferation of such harmful financial crimes, in order to provide an enrichment of current international mechanisms and standards.

PART II

MONEY LAUNDERING AND GLOBAL TERRORISM FINANCING

CHAPTER 1 – MONEY LAUNDERING

2.1.1. Money laundering: a methodological approach

In order to better comprehend the money laundering predicament, it is imperative a methodological approach as to provide a time sequence follow-up understanding of its peculiarities, to be achieved through a historical and legal background, a theoretical and legal delimitation and a general overview on the main stages and techniques that presently occur.

2.1.1.1. Historical and legal background

Although the expression money laundering (ML) is considered to have been first used only in early 20th century[15], several historians argument that its practice remotes to ancient

[14] Recital (35) of the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15–36, No longer in force, Date of end of validity: 25/06/2017; Repealed and replaced by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Retrieved from http://data.europa.eu/eli/dir/2005/60/oj, Hereinafter: Third AML / CFT Directive.

[15] As explained by Seagrave, Sterling (1995), *Lords of the Rim: The invisible empire of the overseas Chinese*, New York: Putnam's Sons, in 2000 BC, Chinese merchants were renowned as hiding their

history[16], whenever occurred any process of turning the revenue of an illegal source into legitimate (or at least dishonestly) earnings.[17]

Historical encounters apart, it was not until the establishment of the US Bank Secrecy Act in 1970[18] that the term money laundering became a legally typified misconduct with imperative counteracting measures[19]. In 1986, the Money Laundering Control Act made ML a federal US crime, introducing civil and criminal penalties application for the Bank Secrecy Act violations [20].

At the international level, from a growing concern of the vast amounts spawned from ML related to the increasing drug trafficking activities, in 1988, the United Nations (UN)

---

wealth from the state to elude taxation and confiscation, moving their fortunes to distant provinces or even outside the country.

[16] As referred in Unger, Brigitte and Van der Linde, Daan (2013), *Money laundering regulation: from Al Capone to Al Qaeda*, Research Handbook on Money Laundering, Elgar Original Reference, pp. 19-32, the term money laundering is cogitated to have been formerly applied by American police in the 1920s to 1930s in the United States to describe Al Capone and other organised criminals activities – a communal method for the mafias to launder their crimes outcomes was by purchasing cash-only Laundromats, in order to settle a legitimate source for the dirty money derived from extortion, prostitution, gambling and bootlegging. After Al Capone was imprisoned and condemned for tax evasion, Meyer Lansky, also called the Mobster's accountant, developed a further sophisticated money laundering technique, known as the loan back concept: disguising illegal revenues by loans provided by compliant foreign banks, especially Swiss Bank Accounts. As referred at Robinson, Jeffrey (1996), *The laundrymen: inside money laundering, the world's third-largest business* (1st North American ed.), Arcade Pub.: Distributed by Little, Brown, New York, the term money laundering later appeared in correlation with the 1973 Watergate scandal.

[17] Other early money laundering activities refer to merchants hiding their profits from local authorities, by overstating exchange rates to conceal interests, and how pirates hid a portion of stolen property before restoring its legitimacy or melting the gold and making new forms to hide its origins. In the medieval age, there have been related processes levelled at disguise in order to provide a lawful appearance to money created from usury, which was forbidden and considered outrageously sinful by the Catholic church.

[18] The Bank Secrecy Act or the Currency and Foreign Transactions Reporting Act, is an US Decree that obliged financial establishments within the US to support government agencies in uncovering and inhibiting ML activities, mostly by requiring those organisations to maintain recordkeeping of surpassing $10,000 daily limit cash transactions, also by identifying individuals conducting such transactions, and finally by reporting distrustful proceedings that may suggest money laundering, tax evasion, or other illegitimate undertakings.

[19] United States of America, Bank Secrecy Act or the Currency and Foreign Transactions Reporting Act, Public Law 91-508, 91st Congress, October 26, 1970, Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1114-2.pdf, Hereinafter: 1970 Bank Secrecy Act.

[20] United States of America, Money Laundering Control Act, Public Law 99-570, 99th Congress, October 27, 1986, Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf, Hereinafter: 1986 Money Laundering Control Act.

and 106 jurisdictions assembled in Vienna in a Conference for the adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.[21]

Acknowledging that criminal organisations, through massive earnings begotten from drug trafficking, could pollute and degrade the structures of the States in all levels, and determined to dispossess individuals engaged in illicit traffic of the proceeds of their criminal activities by suppressing their foremost enticement for those accomplishments, the Vienna Convention established a series of offences and sanctions related to launder revenues earned from drug trafficking.

By criminalizing drug-related money laundering[22] the Vienna Agreement also provided a series of procedures on mutual legal assistance in confiscations, investigations, prosecutions, judicial proceedings and extraditions, inaugurating a solid ground for future international cooperation.

In retort to the command ascertained by the UN Office for Drug Control and Crime Prevention (UNODC) [23] in the 1988 Conference, the Law Enforcement, Organized Crime and Anti-Money-Laundering Unit was established, as a means to carry out the Global Programme against Money-Laundering, Proceeds of Crime and the Financing of Terrorism.

In 1998, the UNODC labelled money laundering as the main formula of 1990's white-collar crime, bearing in mind it is a key enhancer to countless arrangements of other type of illegal activity, particularly by providing sustenance to drug trafficking and financial fraud perpetrated by organized crime factions[24].

On 10th of June in the same year, at the 20th Special Session of the UN General Assembly, devoted to countering the worlds drug problem together, the Members States of the

[21] United Nations, The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Retrieved from http://www.unodc.org/pdf/convention_1988_en.pdf, Hereinafter: 1988 UN Drugs Convention.

[22] Article 3(1)(b) of the 1988 UN Drugs Convention.

[23] Established in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention, the United Nations Office for Drug Control and Crime Prevention (UNODC) is a worldwide front-runner in the fight against illicit drugs and international crime, operating in all parts of the world through a widespread system of ground workforces. For more information, see https://www.unodc.org/unodc/en/

[24] United Nations (1998), *Report on Financial Havens, Bank Secrecy, and Money Laundering*, United Nations Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, Retrieved from https://www.amnet.co.il/joomla/attachments/UN-FINANCIAL%20HAVENS%20laundering.pdf

UN adopted a Political Declaration and Action Plan Against Money Laundering[25], which after five biennial reports between 2001 and 2008[26], was renewed and revised in 2009, as a Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem against ML and with the ambition to promote judicial assistance in order to increase international cooperation[27].

In September 2003 and December 2005, the UN Convention against Transnational Organized Crime[28] and the UN Convention against Corruption[29], respectively, came into force, comprising the main international instruments in the combat against transnational organized crime and corruption.

Jointly, the apparatuses extend ML scope crimes not only by applying its definition to the revenues provided by illicit drug trafficking but also by covering the profits of all grave offences. By commending States to craft a wide-ranging domestic obliged framework for banks and other financial institutions, embracing ordinary and legal persons, as well as any entities

---

25 United Nations, General Assembly, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Resolution adopted by the General Assembly, Twentieth special session, A/RES/S-20/2, 21 October 1998, Retrieved from https://www.unodc.org/documents/commissions/CND/Political_Declaration/Political_Declaration_1998/1998-Political-Declaration_A-RES-S-20-2.pdf, Hereinafter: 1998 UN Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

26 The UN Commission on Narcotic Drugs stipulated the Executive Director of UNODC to organize biennial reports centred on progress made of the implementation of the action plans and measures, to be provided by Governments information. Between 2001 and 2008, the Commission considered five biennial statements on the enactment of the twentieth special session of the General Assembly: 44th Session (2001) – First biennial report; 46th Session (2003) – Second biennial report; 48th Session (2005) – Third biennial report; 50th Session (2007) – Fourth biennial report; 51st Session (2008) – Fifth report, Retrieved from https://www.unodc.org/unodc/en/commissions/CND/Political_Declarations/Political-Declarations_1998-Declaration.html

27 United Nations, Office on Drugs and Crime, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, New York, 2009, Retrieved from https://www.unodc.org/documents/ungass2016/V0984963-English.pdf, Hereinafter: 2009 UN Political Declaration and Plan of Action on International Cooperation

28 United Nations, General Assembly, United Nations Convention against Transnational Organized Crime, Resolution adopted by the General Assembly, Fifty-fifth session, A/RES/55/25, 8 January 2001, Retrieved from https://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf, Hereinafter: 2001 UN Convention against Transnational Organized Crime.

29 United Nations, Office on Drugs and Crime, United Nations Convention against Corruption (UNCAC), New York, 2004, Retrieved from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, Hereinafter: 2005 UN Convention against Corruption.

susceptible to ML, the Conventions also call for the establishment of the Financial Intelligence Units (FIUs)[30].

2.1.1.2. Theoretical and legal delimitation

In an attempt to tackle money laundering undertakings, several organisations, international bodies and jurisdictions seek to conceptualize it to provide a delimitation under a criminal offence. For this accomplishment, to establish a theoretical as well as a legal definition is substantial to address such harmful matter and track solutions to counterattack its activities and fallouts from taking place and endure.

2.1.1.2.1. Money laundering definitions

According to the Organisation for Economic Co-Operation and Development (OECD), money laundering is the practice of disguising illegal gains originated from unlawful activities, for instance, by successfully laundering the proceeds of tax crimes, fraud, embezzlement, drug trafficking, theft, bribery and corruption offences, *inter alia*, for the illicit gains to be relished without distress of being scrutinized, evaluated and confiscated.[31]

In the International Monetary Fund (IMF) understanding, ML is described as the handling of proceeds devised by unlawful incidences with the objective to shroud the connection between the assets and their illegal sources.[32]

Under the UN Office for Drug Control and Crime Prevention (UNODC) definition, regardless of who uses the apparatus of ML, the operational element remain fundamentally

---

[30] The function of the FIUs will be further explored in the topic 4.3.1.2. Financial Intelligence Units role.

[31] As stated by the OECD glossary database of terms used in payments and settlement systems, of the Committee on Payment and Settlement Systems, Bank for International Settlements, Money Laundering is described as "*the attempt to conceal or disguise the ownership or source of the proceeds of criminal activity and to integrate them into the legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means*."

[32] International Monetary Fund (2018), *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, Communications Department, Washington, D.C: IMF, Retrieved from https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism

unchanged: an arrangement by which criminals – whether drug traffickers, corporate embezzlers or corrupt public officials – masquerade the illegal origins of their wealth and shelter their assets, without compromising them, to profit from the revenues and avoid the wariness of law enforcement authorities. To diligently launder assets is also necessary to prevent the illegal activities from leaving a trace of implicating proof. Because the money trail is evidence of their offence, it is vulnerable to confiscation and thus has to be carefully secured.[33]

In agreement with the Financial Action Task Force (FATF) assessment on ML, it is a procedure of critical importance that enables the use of profits generated by individuals or groups that carry out criminal acts without jeopardizing their source, by disguising their illegal origins. Since criminal activities – such as illegal arms sales, smuggling, and the undertakings of organized crime, such as drug trafficking and prostitution rings, embezzlement, insider trading, bribery and computer fraud schemes, among others – can generate massive quantities of incomes, it is essential to launder the unclean money to be able to benefit from it.[34]

In spite of the circumstance that definitions may differ in their terminology, the core objective behind ML predicaments is to conceal the unlawful genesis of such activities in order to accomplish a genuine outcome for these proceeds through a masked arrangement. Fittingly, ML is commonly comprehended as the practice of swapping profits from a wide-scope of criminal offenses in order to provide authentic and legitimate coverage.[35]

2.1.1.2.2. Legislative developments

With the entry into force of the Lisbon Treaty in 2009[36], ML was categorized among the so-called 'Euro-crimes' assortment with a detailed law foundation in Article 83(1) of the

[33] See further at https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html

[34] FATF (2018), *Professional Money Laundering*, FATF, Paris, France, Retrieved from https://www.fatf-gafi.org/publications/methodandtrends/documents/professional-money-laundering.html

[35] Gilmore, William C. (2011), *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 4th Edition, Strasbourg: Council of Europe, p. 34.

[36] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007, p. 1–271, In force, Retrieved from http://data.europa.eu/eli/treaty/lis/sign, Hereinafter: 2009 Lisbon Treaty.

Treaty on the Functioning of the European Union (TFEU)[37], which establishes definitions and a minimum standard regarding severe cross-border crimes, that, due to their dimensions, recall a particular struggle on a common basis[38].

As specified in Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering[39], ML implies the following enumerated behaviours when wittingly performed: "(i) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity; (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity; and (iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing indents."[40]

---

[37] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390, In force, Retrieved from http://data.europa.eu/eli/treaty/tfeu_2012/oj, Hereinafter: TEU and TFEU, respectively.

[38] Article 83(1) TFEU (ex Article 31 TEU) states that "*The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament*."

[39] Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration, OJ L 344, 28.12.2001, p. 76–82, No longer in force, Date of end of validity: 14/12/2005; Implicitly repealed by Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005, Retrieved from http://data.europa.eu/eli/dir/2001/97/oj, Hereinafter: Second AML Directive.

[40] Article (1)(C) of the 2nd AML Directive.

2.1.1.3. Stages and techniques of money laundering

In a broader perspective, ML methods and techniques have become over time progressively intricate. Even though not all money launderers may partake in elaborate stratagems to fulfil their ambitions, for criminal organisations, to clean assets that result from illicit endeavours is essential for the subsistence, attainment and profit from their activities. It is a fact that culprits engage in ML so as to safeguard their illicit agenda and to shield their profits from speculation, inquiry and confiscation, by crafting complications to retrace to its unlawful geneses.[41]

With the purpose of achieving those ends, exceptionally up-to-date ML formulas are continuously being crafted and are generally portrayed as having three noteworthy consecutive stages: (i) placement, (ii) layering and (iii) integration (thus comprehending justification and investment).[42]

In the first level of placement or pre-wash stage, the main objective is to deposit criminal proceeds into the financial system by moving the funds from direct association with the crime, generally cash, into a bank account at home or abroad, smuggled over a border or infused with the turnover of a legitimate business.

The main placement techniques are smurfing and structuring, currency smuggling, travellers' cheques, gambling, casinos, which can be carried out through change of currency and denominations, transportation of currencies and cash deposits. Shell companies[43] in offshore jurisdictions with weaker Anti-Money Laundering (AML) framework are most used

---

[41] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

[42] OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Retrieved from https://www.oecd.org/ctp/crime/money-laundering-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf

[43] Shell companies allow large quantities of money to be expatriated from side to side by simple transfers, in which funds are relocated to the bank accounts of national companies from countless jurisdictions, including OFCs. Under the OECD definition in OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment*, Fourth Edition, OECD Publishing, p. 241, Retrieved from https://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf, a shell company is "*a company that is formally registered, incorporated, or otherwise legally organised in an economy but which does not conduct any operations in that economy other than in a pass-through capacity*."

at the placement stage to collect cash payments that are subsequently sent to other jurisdictions[44].

In the second layering step, the focus is the covering of the criminal source of the profits, by masking the trail to outmanoeuvre the pursuit from government authorities. It is achieved specially by transferring and splitting money amidst bank accounts, States, and entities (individuals or corporations). Wire Transfers and withdrawals in cash are also most common used forms of concealing the incomes criminal geneses, since money can also be taken off and consigned into depository accounts with other banks.

It is also a common practice to use offshore bank accounts in countries that provide secrecy laws and to appoint offshore enterprises as the bank account owners. Are described as laundering techniques in the layering phase with correspondent banking loan at low or no interest rates, back-to-back loans, money exchanges offices, the use of insurance markets, fictitious sales and purchases, shell companies, trust offices, special purpose vehicles (or entities), underground banking, and black market of foreign currencies.[45]

At the layering stage, the launderer may pick an OFC, a large regional business centre, a world banking centre, or any location that offers adequate financial or business base. It is possible for the laundered funds to transit between bank accounts at diverse places in order to leave no trace of the source or last destination[46]. In this sense, the use of OFCs is harmful for it provides the perfect environment to successfully accomplish the money launder.

The integration phase is the rostrum that provides the money now laundered finally to be legally-apparent and available to criminals, with its occupational and often times geographic origins concealed from assessment.

---

[44] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, p. 107, Retrieved from https://ec.europa.eu/eurostat/documents/3859598/8714610/KS-05-17-202-EN-N.pdf/eaf638df-17dc-47a1-9ab7-fe68476100ec

[45] Unger, Brigitte and Verbeken, Dirk (2017), *Offshore activities and money laundering: recent findings and challenges*, Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy, EU: European Parliament, pp. 16-17, Retrieved from http://www.europarl.europa.eu/cmsdata/115250/PANA%202016-04%20ST%20Offshore%20activities%20Final.pdf

[46] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit., p. 76.

As explained by the OECD, the integration stage can be divided in two sub-levels – justification and investment. In the justification point, the money launderer creates a deceptive legal origin for the criminal undertakings by fabricating transactions (invoices, bookkeeping, reports, contracts, agreements), which can be done *e.g.* by producing business within the sources of income of the owner himself, capital gains and loans, by disguising the ownership of assets, and / or by manipulating illicit revenues in businesses with third entities.

The second investment level within integration phase in the conclusion of the ML scheme and provides the welfare means of criminal activities. In this part, cash or electronic money may be used for: safekeeping; final consumption purposes in lifestyle, jewellery, vehicles, yachts, art, homes; and investing in bank accounts, real estate acquisitions, trade based ML, stocks, securities, capital markets, derivatives, receivables, funding of legal and illegal business activities.[47]

The financial statements can be executed implicitly in the system of national accounts and balance of payments management. However, a more in-depth analysis is necessary for the most relevant financial flows to tax havens or OFCs, as well as transactional holdings of cash to enable businesses associated to illicit goods, services and profits.[48]

There is no doubt that in the ML cycle, the more the illegal assets are laundered and entangled in the financial system, the farther complex it becomes to feasibly identify their origins. As a consequence of the stealthy characteristic of ML, it is problematic to conjecture the full amount of global money that goes through the laundry cycle.

As reported by the UN Office for Drug Control and Crime Prevention (UNODC), the likely sum of internationally money laundered in one year is 2 – 5% of global Gross Domestic Product (GDP), or US$ 800 billion – US$2 trillion of current US dollars, which shows that even the lower approximation emphasizes the gravity of the ML phenomenon.[49]

---

[47] OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, cit., p. 11 and 13-14

[48] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit., p. 119.

[49] For more numbers and information on ML and globalization, see https://www.unodc.org/unodc/en/money-laundering/globalization.html

CHAPTER 2 – GLOBAL TERRORISM FINANCING

Intertwined with the grave concern of money laundering, lies the financing of terrorism, which often exploits the exact same gaps for the success of its activities, which is why it must be addressed as well.

Even though not all terrorists – groups and / or individuals – engage on intricate financial techniques to manage their assets, it is essential for their purposes to raise a considerable amount of capital to supply their actions and transmute strategies into terrorist successful achievements. In light of this, methods and techniques of raising funds accompany the required advancement of the size, scope and structure of the terrorist organisations.[50]

Despite the fact that the amount and variety of terrorists, groups, cells, individuals, and related hazards have changed and noticeably augmented in the last decades, the elementary requirements and *desideratum* for terrorists to foster, transfer and expend funds has remained equivalent over times.

The latest terrorist attacks enacted in Paris[51] and Brussels[52] sadly evinced that terrorist occurrences endures to wreak pain and grief in Europe as well as all over the world. Within these circumstances, international community must address such danger with plenty approaches, specially concerning the funding of these ghastly activities.[53]

[50] FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris, Retrieved from www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html

[51] From 7 January 2015 to 9 January 2015, terrorist attacks arose within the Île-de-France region, intensely in Paris. 17 people were killed in four shooting attacks (Charlie Hebdo, Fontenay-aux-Roses and Montrouge shootings, Dammartin-en-Goële hostage crisis, Hypercacher Kosher Supermarket siege), which also resulted in the injure of 22 other people. Al-Qaeda in the Arabian Peninsula claimed responsibility and said that the synchronized outbreaks had been designed for years. After the terrorist attacks in Paris in January 2015, the EU decided to strengthen its response and hasten the application of approved counteractings.

[52] On 22 March 2016, the Islamic State of Iraq and the Levant (ISIL) claimed responsibility for three organised suicide bombings struck in Belgium: two at Brussels Airport in Zaventem, and one at Maalbeek metro station in central Brussels. 32 people and 3 perpetrators were killed, with more than 300 people wounded.

[53] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments,* Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

2.2.1. Criminalization of terrorism and its financing

Following September 11 aftermaths, jurisdictions across the world reunited in order to underline the links between terrorism, transnational organized crime, international drug trafficking and money laundering, calling on countries that had not done so to straightaway become parties in the international conferences. In order to establish and delimitate the funding of terrorism, it is essential to draw the line of its criminalization and financing throughout a timeline.

It is a well-known fact that terrorists demand funds to coordinate and conduct their brutalities – to purchase weapons, supplies to make explosives, travel, as well as effectively recruit new operatives, members and supporters. For this reason, investigating the money trail is crucial for the mission of depriving terrorists and organisations of the access to the financial system and to subsiding its activities, with the aim to identify those involved in the terrorist cycle and prevent terrorist attacks from occur in the first place.[54]

2.2.1.1. Historical and legal background

Since 1963, global community has elaborated various international legal instruments to prevent terrorism, that comprises several instruments regarding civil aviation, protection of international staff, taking of hostages, nuclear material, maritime navigation, explosive materials, terrorist bombings, financing of terrorism and nuclear terrorism.[55]

As an immediate response to its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, the UN Security Council implemented Resolution 1373, imposing specific commitments on Member States regarding the prevention and the suppression of the financing of terrorist acts.

By establishing the illegitimacy of terrorism-related activities as well as of any endowment to perpetrate terrorist acts, the UN Security Council determined that one of the main

[54] FATF (2018), *Financing of Recruitment for Terrorist Purposes*, FATF, Paris, Retrieved from www.fatf-gafi.org/publications/methodsandtrends/documents/financing-recruitment-terrorist-purposes.html

[55] The UN Office of Counter-Terrorism enlists the main 19 universal legal instruments and additional amendments dealing with terrorism at http://www.un.org/en/counterterrorism/legal-instruments.shtml

concerns to be addressed should be to obstacle by all means the funding and safe haven of terrorists performers, endorsing above all, the imperative need of exchange of information to avoid terrorist acts to take place.

In the same Resolution, the Council also founded the Counter-Terrorism Committee (CTC), with the mission to oversee the accomplishment of the Resolution determinations.[56]

In 1999, the UN Office on Drugs and Crime (UNODC) commenced to focus on counter-terrorism issues. In April 2002, by obliging Member States to safeguard their financial systems and institutions from individuals planning or engaged in terrorist activities, the International Convention for the Suppression of the Financing of Terrorism came into force.[57]

After the endorsement of an intensified programme of activities, in 2002, UNODC's specialized Terrorism Prevention Branch (TPB) was assigned to deliver practical aid to Member States adhere and apply transnational legal instruments correlated to the prevention and suppression of terrorism, specially the aforementioned 1999 UN Convention on this matter.

In September 2006, the UN Global Counter-Terrorism Strategy was adopted by the UN General Assembly in the form of a Resolution (A/RES/60/288)[58] and an Action Plan[59] as a *sui generis* global standard to heighten national, regional and international struggles to counter terrorism in all its forms, to be reviewed every two years. This enforcement was unique due to the fact that it represented the foremost opportunity in which all Member States agreed on a joint tactical scheme to fight terrorism, not only by acquiescing that terrorism is absolutely

[56] United Nations, Security Council, Resolution 1373, Adopted by the Security Council at its 4385th meeting, S/RES/1373, 28 September 2001, Retrieved from https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf, Hereinafter UN Security Council Resolution 1373.

[57] United Nations, General Assembly, International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109, 9 December 1999, Retrieved from http://www.un.org/law/cod/finterr.htm, Hereinafter: 1999 UN International Convention for the Suppression of the Financing of Terrorism.

[58] United Nations, General Assembly, The United Nations Global Counter-Terrorism Strategy, Resolution adopted by the General Assembly, Sixtieth session, A/RES/60/288, 8 September 2006, Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/288, Hereinafter: 2006 UN Nations Global Counter-Terrorism Strategy.

[59] The Plan of Action, annexed to the 2006 UN Nations Global Counter-Terrorism Strategy, is composed by four pillars, which are (i) addressing the conditions conducive to the spread of terrorism; (ii) measures to prevent and combat terrorism; (iii) measures to build the States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard; and (iv) measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

intolerable but also by settling hand-on stepladders both individually and collectively to avoid and antagonize its practices.

The implementation of the stratagem accomplished the pledge done by world leaders at the 2005 September Summit[60], by building elements that were later proposed in the 2006 Secretary-General Kofi Annan Report, undertitled as 'Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy[61], to hope for a global effort to fight terrorism. In this opportunity, considering terrorist networks surpass national borders, it was made clear that enhancing international cooperation is crucial to successfully neutralize terrorist activities.

Bearing in mind that counter terrorism is one of the uppermost priorities for the EU, its Member States and its partners, due to its grave consequences on an international basis, the European Council adopted an European Agenda on Security for the period 2015-2020, whose strategy to fight terrorism globally and make Europe securer, are based on four pillars, which are: (i) prevent, (ii) protect, (iii) pursue and (iv) respond.[62]

In 2016, the European Council adopted Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime[63], which, among other measures, establishes a record with a 5-year limit on the use of passenger name record data for law enforcement purposes, especially counter terrorism, among other definitions[64].

---

[60] The 2005 World Summit took place in the city of New York, Washington, D.C, on 14–16 September 2005. The conference was a follow-up meeting to the United Nations' 2000 Millennium Summit, and decisive for the agreement on the UN Millennium Declaration and the Millennium Development Goals.
[61] The follow-up to the outcome of the Millennium Summit Uniting against terrorism: recommendations for a global counter-terrorism strategy, United Nations, General Assembly, Uniting against terrorism: recommendations for a global counter-terrorism strategy, Report of the Secretary-General. Sixtieth Session, A/60/825, 27 April 2006, Retrieved from https://undocs.org/A/60/825
[62] The EU counter-terrorism strategic commitment to combat terrorism globally while respecting humans rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice, Council of the European Union, The European Union Counter-Terrorism Strategy, 14469/4/05 REV 4, Brussels, 30 November 2005, Retrieved from http://register.consilium.europa.eu/doc/srv?l=ENandf=ST%2014469%202005%20REV%204
[63] Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ L 119, 4.5.2016, p. 132–149, In force, Retrieved from http://data.europa.eu/eli/dir/2016/681/oj
[64] PNR data is personal information that are provided by passengers, collected and held by air carriers. It includes information such as the name of the passenger, travel dates, itineraries, seats, baggage, contact details and means of payment.

2.2.1.2. Defining global terrorism financing

In the counter terrorism financing arena, one of the foremost complexities is precisely delineating what is considered, *de facto*, terrorism. Because of the noteworthy political, religious and national repercussions that differ from country to country, not all States harmonize on exactly what actions comprise terrorism.

In light of this, to comprehend clearly the global terrorism financing occurrence, first of all it is important to provide a conceptual delineation and a wholesome analysis on its legal provisions.

2.2.1.2.1. Conceptual delineation

Even though the majority of nations adopt the 1999 UN International Convention for Suppression of the Financing of Terrorism definition of terrorism, many countries decided not to embrace the international agreement definition.[65]

Among its 40-Recommendations assessment, the FATF[66] specifies under Section C, four specific guidelines regarding terrorist funding and the financing of proliferation. In this evaluation, the 5th Recommendation on terrorist financing offence states what is considered a terrorist financing offence, pressing that "countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in

[65] Schott, Paul Allan (2006), *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX The International Bank for Reconstruction and Development/The World Bank/The International Monetary Fund*, Retrieved from http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

[66] As it will be further elucidated in the topic 2.3.1. Financial Action Task Force outcomes, the FATF is an inter-governmental body leading the global effort in AML and CFT arena. The FATF Recommendations, for its part, are known as the international standards for combating money laundering and the financing of terrorism.

the absence of a link to a specific terrorist act or acts. Countries should ensure that such offences are designated as money laundering predicate offences."[67]

Towards this end, the inter-governmental body establishes international standards steering financial sanctions related to terrorism and terrorist financing (Recommendation 6); financial sanctions related to proliferation (Recommendation 7); and non-profit organisations (Recommendation 8).[68]

On these grounds, the FATF also chose not to explicitly define the meaning of funding terrorism in its 9 Special Recommendations on Terrorist Financing[69], but urges countries to ratify and implement the 1999 UN International Convention for Suppression of the Financing of Terrorism as well as other UN resolutions regarding avoidance and suppression of the financing of terrorist acts, principally the UN Security Council Resolution 1373.[70]

For the IMF, terrorism financing can be defined as the procedure endured to foster money in order to provide funding of terrorist activities, which involves the solicitation, collection or provision of resources with the intention that they may be used to sustain terrorist acts or entities. Under the Fund's view, assets can be from both legal and illicit sources and the chief objective of persons or organisations tangled in the supporting of terrorism is, hence, not

---

[67] FATF (2012-2018), *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, FATF, Paris, France, Retrieved from www.fatf-gafi.org/recommendations.html, Hereinafter: FATF Recommendations.

[68] FATF Recommendations, cit.

[69] The FATF developed nine Special Recommendations on Terrorist Financing following the events of 2001 September 11, that conjoined with the FATF Recommendations on ML, establish the main framework to detect, counteract and suppress the financing of terrorism and terrorist acts. See further in FATF (2001-2008), *FATF IX Special Recommendations*, FATF, Paris, Retrieved from https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf, Hereinafter: FATF 9 Special Recommendations.

[70] Among the FATF 9 Special Recommendations, according to the 1st FATF Special Recommendation, "*Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373*." In the 5th Recommendation of the international standards on combating money laundering and the financing of terrorism and proliferation, the FATF also reinforce this endorsement, by stating that "*Countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific terrorist act or acts*." In FATF 9 Special Recommendations, cit.

essentially to disguise the origin of the revenues, but first to camouflage both the funding and the nature of the financed endeavour.[71]

2.2.1.2.2. Legal provisions

Succeeding the first-hand arrangements established by the 2009 Lisbon Treaty, terrorism was included alongside money laundering and other offences in the 'Euro-crimes' category specified in Article 83(1)[72] of the TFEU.

The most imperative and widespread legal definition of Global Terrorist Financing was moulded in the 1999 UN International Convention for Suppression of the Financing of Terrorism, which is adopted by the main majority countries for purposes of defining terrorist financing. In conformity with Article 2(1) of this worldwide Instrument, "Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act."[73]

At the EU level, in conformity with Article 1(4) of the Third AML / CFT Directive on the prevention of the use of the financial system for the purpose of money laundering and

[71] International Monetary Fund (2018), *The IMF and the Fight Against Money Laundering and the Financing of Terrorism, Communications Department*, Washington, D.C: IMF, cit.

[72] Article 83(1) TFEU (ex Article 31 TEU) states that "*The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament*."

[73] 1999 UN International Convention for Suppression of the Financing of Terrorism, cit.

terrorist financing, the term ‘terrorist financing’ signifies “the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4[74] of Council Framework Decision 2002/475/JHA of 13 June 2002[75] on combating terrorism.”

2.2.1.3. Methods of terrorism financing

Frequently, the practices that are used to launder money are essentially the same as those used to conceal the funding and performing of terrorist activities. As mentioned above, the revenues that are used to finance terrorism may derive from criminal activities or even legitimate causes, namely donations or gifts of cash or other assets to organisations, such as foundations or charities, for instance.

Regardless of whether the legitimate or illicit origin, it is decisive to conceal that these assets are being used for terrorist activities, which by the 1999 UN International Convention for the Suppression of the Financing of Terrorism adoption obligations has become in most countries absolutely prohibited, and for this reason, demands to surpass undetected. Also, under the terrorist’s perspective, disguising the origin is important to make it available for future funding purposes.

Counter terrorist financing also encompasses deliberation of what procedures should be taken to impede the use of entities by money launderers and terrorists, comprising,

[74] Articles 1 to 4 specifies Terrorist offences and fundamental rights and principles (art. 1), offences relating to a terrorist group (art. 2), offences linked to terrorist activities (art. 3), inciting, aiding or abetting, and attempting terrorist offences (art. 4). In the following Articles, the aforementioned 3rd AML / CFT Directive establishes penalties (art. 5), particular circumstances (art. 6), liability of legal persons (art. 7), penalties for legal persons (art. 8), Jurisdiction and prosecution regarding terrorism activities and consequences (art. 9), protection of, and assistance to, victims (art. 10), Implementation and reports (art. 11) and finally, territorial application to include Gibraltar (art. 12).

[75] Council Framework Decision of 13 June 2002 on combating terrorism, OJ L 164, 22.6.2002, p. 3–7, No longer In force, Date of end of validity: 19/04/2017; Repealed and replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, Retrieved from http://data.europa.eu/eli/dec_framw/2002/475/oj

for example, the scrutiny of unusual types of money transmission[76] or transmittal systems[77]. At the same time, it is important to notice that terrorist funding derived from illegal origins may already be covered by each national AML framework, hinging upon the range of predicate misdemeanours.[78]

2.2.1.3.1. Main TF practices

In a comprehensive overview, it is possible to delineate the main revenue sources from which terrorists organisations raise funds to sustain their activities. According to the US Department os Treasury[79], nearly 33% of terrorist financing implicate private donations as an undeviating financial provision from individuals to terrorist networks. Wealthy private donors can be an important source of income for some terrorist groups. For instance, the FATF ISIL Report points out that ISIL has received considerable resources from prosperous private benefactors in the region.[80]

Another common practice reported is through the abuse of Non-Profit Organisations or Institutions[81] (NPOs / NPIs), which is carried out by five underlying

---

[76] According to the FATF 9 Special Recommendations, Interpretative Note to Special Recommendation VI: Alternative Remittance, the term "*Money or value transfer service refers to a financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money/value transfer service belongs. Transactions performed by such services can involve one or more intermediaries and a third-party final payment*."

[77] According to the FATF 9 *Special Recommendations*, Interpretative Note to Special Recommendation VI: Alternative Remittance informal systems are recurrently indicated to as substitute remittance facilities or concealed (or parallel) banking systems in selected countries, for most times these systems are linked to specific geographic areas and are thus designated using its particular terms which examples include the systems hawala, hundi, fei-chien, and the black market peso exchange. For more information on Hawala and other remittance systems, see International Monetary Fund (2005), *Regulatory Frameworks for Hawala and Other Remittance Systems*, Washington, D.C: IMF Publication Services.

[78] Schott, Paul Allan (2006), *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX The International Bank for Reconstruction and Development/The World Bank/The International Monetary Fund*, cit.

[79] United States of America, Department of Treasury, National Terrorist Financing Risk Assessment, Washington, 2015, Retrieved from https://home.treasury.gov/system/files/136/2018ntfra_12182018.pdf

[80] FATF (2015), *Financing of the terrorist organisation Islamic State in Iraq and the Levant (ISIL)*, FATF, Paris, Retrieved from http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf

[81] Under the OECD definition in OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment*, Fourth Edition, OECD Publishing, cit., p. 239, NPIs are "*are legal or social entities, created*

behaviours: (i) deviation of contributions through associated individuals to terrorist organisations; (ii) corruption of some NPO authorities in behalf of a terrorist organisation; (iii) misuse of program delivery to fund the terrorist organisation; (iv) sustenance for recruitment into terrorist organisations and (v) the design of 'false representation and bogus NPOs' through falsification / fraud.

As revealed earlier, terrorist organisations may also use as funding asset the proceeds of criminal activities, by engaging in a multiplicity of illegal undertakings to produce funds, such as identity thefts to raise finances via credit card fraud, insurance and loan fraud, smuggling of goods, including cigarettes, tax fraud, bank robberies, drug trafficking networks, among many others.

Understood as a common method of terrorist funding is the reverse money-laundering practice, where money from legal sources is used to serve a terrorist purpose: instead of using profits of criminality to camouflage them and reduce detection probabilities, genuine resources are employed for illegal activity to avoid taxation. Motivations for the use of reverse money laundering may include tax avoidance, bribery, and any form of cutting corners when it comes to following the rules in the business world, as well as other criminal deeds. Because legitimate funds are used for reverse money laundering, it can mean it's much more difficult to monitor, detect, and prevent it than straightforward money laundering.[82]

Comprised as terrorist funding techniques are also the extortion of local and diaspora populations, businesses and executing kidnapping for ransom. Over times, smaller terrorists' attacks funds are fostered by individual terrorists and their backing linkages depleting reserves, access to credit or businesses earnings underneath their power, such as legitimate commercial enterprises. Repeatedly, certain terrorist organisations have been financially supported even by national governments sponsorship.

Amidst emerging terrorist financing threats and vulnerabilities, virtual currencies have risen as the main method of international movements of assets, attracting the attention of assorted criminal groups, especially terrorist individuals and groups as a widespread adoption in the crime landscape.

---

for the purpose of producing goods and services, whose status does not permit them to be a source of income, profit, or other financial gain for the units that establish, control, or finance them."

[82] Krieger, Tim and Meierrieks, Daniel (2011), *Terrorist Financing and Money Laundering*, Retrieved from: https://ssrn.com/abstract=1860069

By providing anonymity for both operators and transactions, virtual currencies deliver free movement of illegal incomes briefly from one country to another, thus offering higher consistency as well as low volatility and exchange risks. Prepaid cards, electronic payments, internet-based payment services, and social media fundraising also appear as innovative forms of TF.

Lastly, the key mechanisms expended to move terrorist assets comprises the use of potentially vulnerable financial institutions that facilitate illicit fund transfers, which are mainly carried out through banks, money value transfer systems and physical transportation of cash.

In this assessment, the banking system is an appealing system for terrorists that seek to move funds globally by reason of the readiness and speed of transactions within the international financial network, especially regarding those made available in offshore jurisdictions, as it will be better explored below.[83]

CHAPTER 3 – AML / CFT COMPLIANCE ARCHITECTURE

In a thorough outline regarding Anti-Money Laundering and Combating the Financing of Terrorism (AML / CFT) comprehensive legislative framework, it is possible to delineate three main distinctive periods: (i) a national, monitoring and precautionary approach in the early 1970s; (ii) an international criminalization in the latter 80's with the 1988 UN Drugs Convention; and (iii) a supra-nationalization phase with the establishment of the FATF in 1989, with the aim to internationally improve and standardize AML / CFT measures, especially through its Recommendations package[84], as it will be further evaluated on the present study.

2.3.1. Financial Action Task Force outcomes

Currently, the international body leading the global effort in AML and CFT arena is the Financial Action Task Force (FATF), an inter-governmental organisation first established

[83] FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris, cit.
[84] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

in 1989 by the European Commission, the G7 Member States[85] and eight other countries[86] in an exertion to tackle the growing money laundering hazard, terrorist financing and potential vulnerabilities of the international financial arrangement.[87]

Presently comprehending thirty-six members jurisdictions and two regional organisations[88], the FATF represents the major part of worldwide financial centres, imbedding also nine associate members[89] and twenty-three other observer organisations, including the International Monetary Fund, the World Bank and the United Nations, among others.[90]

---

[85] The Group of Seven (G7) is a group consisting of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States.

[86] During 1991 and 1992, the FATF expanded its membership from the original 16 to 28 members. In 2000 the organisation expanded to 31 members and is formed by 38 members at present. The current member jurisdictions that form the FATF are: Argentina; Australia; Austria; Belgium; Brazil; Canada; China; Denmark; European Commission; Finland; France; Germany; Greece; Gulf Co-operation Council; Hong Kong, China; Iceland; India; Ireland; Israel; Italy; Japan; Republic of Korea; Luxembourg; Malaysia; Mexico; Netherlands, Kingdom of; New Zealand; Norway; Portugal; Russian Federation; Singapore; South Africa; Spain; Sweden; Switzerland; Turkey; United Kingdom; United States.

[87] See further at the FATF official site http://www.fatf-gafi.org/

[88] The FATF regional organisations are Indonesia and Saudi Arabia.

[89] The FATF associate members are: Asia/Pacific Group on Money Laundering (APG); Caribbean Financial Action Task Force (CFATF); Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL); Eurasian Group (EAG); Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG); Financial Action Task Force of Latin America (GAFILAT) formerly known as Financial Action Task Force on Money Laundering in South America (GAFISUD); Inter Governmental Action Group against Money Laundering in West Africa (GIABA); Middle East and North Africa Financial Action Task Force (MENAFATF); and Task Force on Money Laundering in Central Africa (GABAC).

[90] The international organisations that have an observer status at the FATF are the African Development Bank; Anti-Money Laundering Liaison Committee of the Franc Zone (CLAB); Asian Development Bank; Basel Committee on Banking Supervision (BCBS); Camden Asset Recovery Inter-agency Network (CARIN); Egmont Group of Financial Intelligence Units; European Bank for Reconstruction and Development (EBRD); European Central Bank (ECB); Eurojust; Europol; Group of International Finance Centre Supervisors (GIFCS) [formerly the Offshore Group of Banking Supervisors - OGBS]; Inter-American Development Bank (IDB); International Association of Insurance Supervisors (IAIS); International Monetary Fund (IMF); International Organisation of; Securities Commissions (IOSCO); Interpol; Organisation of American States / Inter-American Committee Against Terrorism (OAS/CICTE); Organisation of American States / Inter-American Drug Abuse Control Commission (OAS/CICAD); Organisation for Economic Co-operation and Development (OECD); Organisation for Security and Co-operation in Europe (OSCE); United Nations - United Nations Office on Drugs and Crime (UNODC), United Nations Counter-Terrorism Committee Executive Directorate (UNCTED), The Analytical Support and Sanctions Monitoring Team pursuant to resolutions 1526(2004) and 2253(2015) concerning ISIL (Da'esh), Al-Qaida and the Taliban and associated individuals and entities; The Expert Group to the Security Council Committee established pursuant to resolution 1540 (2004), Panel of Experts to the Security Council Committee established pursuant to resolution 1718 (2006), Security Council Subsidiary Organs Branch; World Bank and the World Customs Organisation (WCO).

The FATF decides its core resolutions through its head-Plenary, which assemblies takes place three times per year.

The main resolution of the FATF is to guarantee that AML / CFT compliance measures are effectively met, as well as other liabilities regarding the integrity of the banking system and financial institutions in cooperation with other international stakeholders.

In order to achieve those objectives, the FATF issued a series of universal, coordinated and up-to-date Recommendations[91] that are known as the international standards for combating money laundering and the financing of terrorism, including the spread of weaponries categorized as mass destruction and other perils concerning the international financing system.

Although the Recommendations comprise a non-law enforced mechanism in a particular instance of soft law, bearing in mind the FATF has been endorsed as a worldwide guidance for AML / CFT standards, this instrument has took an utmost mandatory aspect, especially considering the possible loss of membership status and eventual sanctions resulting from not applying the recommendations. For this reason, in the AML arena, there is a peculiar interface within soft and hard law, since one depends to the another on a persistent bolstering basis.[92]

Amidst the Recommendations compendium[93], are several AML / CFT policies and risk evaluations, which involves assessing menaces and applying a risk-based approach (RBA), based on a high-level of international cooperation and coordination arrangement between the financial intelligence units (FIU), law enforcement authorities, and other relevant competent authorities [94].

[91] First settled in 1990, as an initiative to fight the financial systems misapplication by drug money launderers, the Recommendations were then revised in 1996 to widen their extent and reflect the increasing money laundering developments and practices. Further the 9/11 attacks, in October 2001 the FATF broaden its mandate to embrace the funding of terrorism issue, by also creating the Eight (which later became Nine) Special Recommendations on Terrorist Financing. The Recommendations were reviewed a second time in 2003 and most recently on 16 February 2012 to guarantee that they remain efficient and pertinent. Conjointly with the Special Recommendations, the Recommendations have been recognized by over 180 countries as the international standard for AML and CFT.

[92] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

[93] FATF Recommendations, cit.

[94] FATF Recommendations, cit., No. 1 and 2.

In a preventive measure assessment, by establishing limits to financial institutions secrecy laws[95], the proposed measures entails that financial institutions ought to provide constant surveillance by customer due diligence (CDD) measures[96], five year record-keeping transactions[97], politically exposed persons (PEP) investigations[98], immediately report of suspicious activities[99] and guarantee transparency through identification of legal persons and entities beneficial ownership[100].

As to ensure the objectives are achieved, the Recommendations endure countries and jurisdictions to establish sanctions, whether criminal, civil or administrative applicable to entities and individuals who disrupt the regulatory and legal standards[101].

In order to promote transparency, one of the main fronts of the joint assignment is to promote international cooperation, to be assured by worldwide instruments and mutual legal assistance[102], and even deliver prompt extraditable offences regarding money laundering and terrorist financing, upon request.[103]

The Recommendations archetypal design a model that comprises at the same time criminalization of money laundering and terrorist financing as well as measures devised to avoid earnings of unlawful activities from entering into the financial system as legitimate sources. This standard has been adopted by the AML / CFT legislation of most countries as well as the EU framework achievements, as it will be seen below.[104]

2.3.2. AML / CFT comprehensive legislative framework

Considering all countries and jurisdictions have different legislations and distinct techniques for combating money laundering, terrorist funding, and other financial crime related

[95] FATF Recommendations, cit., No. 9.
[96] FATF Recommendations, cit., No. 10.
[97] FATF Recommendations, cit., No. 11.
[98] FATF Recommendations, cit., No. 12.
[99] FATF Recommendations, cit., No. 20.
[100] FATF Recommendations, cit., No. 24 and 25.
[101] FATF Recommendations, cit., No. 35.
[102] FATF Recommendations, cit., No. 36, 37 and 38.
[103] FATF Recommendations, cit., No. 39.
[104] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments,* Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

matters, the FATF supervises the progress of its members globally, nonetheless it is up to each country to implement effective actions to ensure their national systems complies with the agreed standards. At the EU level, those benchmarks were objective of Council Directives addressed to Member States that must be incorporated in its internal legislation in a tight schedule.

2.3.2.1. AML / CFT Directives

Amongst the most prominent AML / CFT legislations achievements, are the Directives adopted at the European Level, which have been continuously following the works carried out by the FATF and other international bodies and organisations, specially the OECD.

2.3.2.1.1. Previous achievements

The First AML Directive[105] was adopted in June 1991 by the Council of the EU with the aim to harmonize legislative framework within its Member States regarding its Single Market[106], imbedding customer identification measures, 5-year record-keeping and important coverage techniques of suspicious transactions.[107] The 1st AML Directive established a two year maximum limit to Member States incorporate laws, regulations and administrative decisions necessary to comply with the sanctioned Directive.[108]

A decade later, addressing the FATF remodulation perpetrated works, the Second AML Directive was adopted, incorporating not only a stricter AML agenda, but also broadening its definition and other underlying violations within its range.

---

[105] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L 166, 28.6.1991, p. 77–82, No longer in force, Date of end of validity: 14/12/2005; Repealed by Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005, Retrieved from http://data.europa.eu/eli/dir/1991/308/oj, Hereinafter: First AML Directive.

[106] According to the European Commission, "*The Single Market refers to the EU as one territory without any internal borders or other regulatory obstacles to the free movement of goods and services*." For further information on the Single Market, see https://ec.europa.eu/growth/single-market_en

[107] These changes incorporated the FATF Recommendations, cit., No. 10, 11 and 20, with respectively correspondence in Articles 3, 4 and 7 of the 1st AML Directive.

[108] Article 16 of the 1st AML Directive.

Diligently pursuing the FATF programmes, in 2006, the Third AML / CFT Directive came into picture, extending the prevention of the use of the financial system for the purpose of money laundering also to terrorist funding.

Additionally, this Directive introduced the risk-based-approach (RBA) advised on the FATF Recommendations 1 and 2, as well as reformulated the customer due diligence assessment, consolidated in to the 'know your customer' or 'know your client' (KYC) procedure[109] and politically exposed persons (PEPs) investigations[110] model.

Amidst other changes, the Directive also interleaved reporting obligations with the creation of central national units – designated as international financial intelligence units (FIUs) [111] – in an effort to improve international cooperation to effectively and jointly combat money laundering and terrorist financing.[112]

In May 2015, the Fourth Directive to address the threat of money laundering and terrorist financing came into force, introducing the concern with the increasingly use of electronic money products as a substitute for bank accounts, which can lead to the misuse of the financial system, thus subjecting those products to AML / CFT obligations[113].

By setting out a resourceful and wide-ranging legal framework, the 4th Directive addressed ML and TF problems by entailing Member States to detect, comprehend and alleviate risks related to criminal activities.

The 4th AML / CFT Directive deadline for the Member States transposition occurred on 26 June 2017 and constituted the leading instrument in advancing measures to avoid the exploit of the financial system at the Union level for money laundering and terrorist funding purposes.

---

[109] This change incorporated the FATF Recommendations, cit., No. 12, which are referred in Articles 3 and 13 of the 3rd AML / CFT Directive.

[110] Chapter II of the 3rd AML / CFT Directive.

[111] Article 21 of the 3rd AML / CFT Directive.

[112] According to Article 21(2) of the 3rd AML / CFT Directive, the FIUs shall be responsible for receiving (and to the extent permitted, requesting), analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing or are required by national legislation or regulation and shall be provided with adequate resources in order to fulfil its tasks.

[113] Article 12 of the 4th AML / CFT Directive.

2.3.2.1.2. The 5th EU AML / CFT Directive

The Fifth EU AML / CFT Directive[114] was published in June 2018, enacting a series of amendments to the 4th AML / CFT Directive, Directives 2009/138/EC[115] and 2013/36/EU[116] and in reaction to the recent terrorist events that lamentably took place in Paris and Brussels.[117]

The 5th AML, in this sense, has brought ground-breaking amendments to the Union framework, introducing strategies to regulate and fight prospective vulnerabilities of the new virtual era. Considering that cryptocurrencies are recurrently used for money laundering and terrorism financing resolutions[118], the 5th AML / CFT Directive alludes to potential hazards permitted by the anonymity of virtual currencies for financial crimes[119], unlawful purposes[120] and demands Member States to guarantee a more effective and force-combined approach when undertaking financial investigations regarding terrorism, comprising those associated to the unauthorized use of virtual currencies.[121]

---

[114] Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, PE/72/2017/REV/1, OJ L 156, 19.6.2018, p. 43–74, In force, Retrieved from http://data.europa.eu/eli/dir/2018/843/oj, Hereinafter: 5th AML / CFT Directive.

[115] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance), OJ L 335, 17.12.2009, p. 1–155, In force, Retrieved from http://data.europa.eu/eli/dir/2009/138/oj

[116] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance, OJ L 176, 27.6.2013, p. 338–436, In force, Retrieved from http://data.europa.eu/eli/dir/2013/36/oj

[117] Recital (2) of the 5th AML / CFT Directive makes explicit reference to the aforementioned terrorist attacks, by stating that "*Recent terrorist attacks have brought to light emerging new trends, in particular regarding the way terrorist groups finance and conduct their operations.*" As reported by the European Parliament site information, in recent years there has been an increase in terrorist threats and attacks, beginning in 2015 with the killings at the Charlie Hebdo magazine office in Paris.

[118] FATF (2018), *FATF Report to G20 Finance Ministers and Central Bank Governors*, FATF, Paris, France, Retrieved from https://www.fatf-gafi.org/publications/fatfgeneral/documents/report-g20-fm-cbg-july-2018.html

[119] As in Marian, Omri Y. (2013), *Are Cryptocurrencies 'Super' Tax Havens?* Michigan Law Review First Impressions 38, Retrieved from: https://ssrn.com/abstract=2305863, cryptocurrencies "*could replace tax havens as the weapon-of-choice for tax-evaders*"

[120] Recital (9) of the 5th AML / CFT Directive.

[121] Recital (16) of the 5th AML / CFT Directive.

Within its array of enhancements, the 5th AML / CFT Directive introduces the concept of virtual currencies[122] and custodian wallet provider[123], which head the main innovation in this trailblazing legislation. As specified by the new Directive regulation, cryptocurrencies exchanges are therefore envisaged as legal-binding entities, in an attempt to categorize these computer-generated transactions under the same AML / CFT parameters already applied to other financial institutions enumerated on the 4th AML / CFT Directive. In a practical matter, this implicates an obligation to perform customer due diligence (CDD), and also mandatory submission of periodic suspicious activity reports.

The 5th AML / CFT Directive also delivers critical improvements regarding the role of FIUs, which will be better explicated below[124]. The pioneering Directive sets out in addition a well-organized and far-reaching legal scaffold for tackling the gathering of assets and funds for terrorist purposes, in an exertion for Member States to detect, comprehend and alleviate the jeopardies related to money laundering and terrorist financing.[125]

Another turning point provided by this innovative regulation is that now, transparency has become the norm: registers of beneficial ownership information previously built under the 4th AML / CFT Directive must be made available to the general public, which means that beneficial ownership information is now to be grant to any natural or legal person that may demonstrate a legitimate interest as well as to any person that fills a request related to a trust or similar legal organisation that holds or controls any business or other legal person.

The extent of the information now must comprise, as a minimum: (i) the beneficial owner's month and year of birth; (ii) country of residence; (iii) nationality; and (iv) the nature and extent of the beneficial interest held.[126]

Under the 5th AML / CFT Directive also anonymous bank accounts, savings accounts or safe deposit boxes shall be obliterated. For these tenacities, Member States shall produce central electronic data retrieval systems by latest 10 September 2020, as a means to

---

[122] Under the new 5th AML / CFT Directive, virtual currencies are not to be confused with electronic money, and are defined as a "*a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically*".

[123] As outlined by the 5th AML / CFT Directive, "*custodian wallet provider means an entity that provides services to safeguard private cryptographic keys on behalf of its customers, to hold, store and transfer virtual currencies*."

[124] See topic 4.3.1.2. Financial Intelligence Units Role.

[125] Recital (1) of the 5th AML / CFT Directive.

[126] Article 1(15)(c) of the 5th AML / CFT Directive.

provide suitable rapport of any natural or legal person that holds or controls such accounts, which data will be unswervingly reachable by FIUs and national competent authorities.[127] Member States are urged to integrate the new regulations adjustments in their domestic framework by latest January 20th, 2020[128].

PART III

OFFSHORE JURISDICTIONS

CHAPTER 1 – AN OFFSHORE ASSESSMENT

Throughout times, offshore activities became more sophisticated – often leveraging informal value transfer systems to keep money out of the hands of tax collectors. Tax havens or low-tax jurisdictions create place to elope taxation in a weak regulation environment by offering a low or zero tax levy, non-genuine residency and confidentiality, thus, opening gaps as well to criminal endeavours. Some EU countries – for instance Estonia, Latvia, Malta and Cyprus – have conceivably built their economies by inviting foreign incomes, oftentimes without effectively monitoring the origin of that cash – thus the problem of OFCs roles in the financial system.

3.1.1. Financial scandals

Following the broke of the *Luxembourg Leaks*[129] by the International Consortium of Investigative Journalists (ICIJ)[130] in 2014, the world turned its attention to aggressive tax

[127] Article 1(42) of the 5th AML / CFT Directive.
[128] Article 4 of the 5th AML / CFT Directive.
[129] The Luxembourg Leaks, also known as the Lux Leaks, is the financial scandal that was exposed by the ICIJ in November 2014, that revealed PricewaterhouseCoopers had obtained at least 548 tax rulings in Luxembourg from 2002 to 2010 designed to create drastic tax reductions for several multinational companies, among them Pepsi, IKEA, AIG, Coach, Deutsche Bank, Abbott Laboratories and nearly other 340 other companies. See further at https://www.icij.org/investigations/luxembourg-leaks/
[130] Instituted in 1997, the ICIJ is an international network comprising more than 200 investigative journalists in 70 countries who participate uncovering facts and stories on a cooperative basis environment. For more information on the ICIJ, see: https://www.icij.org/

planning operations, which were being carried out by taxpayers, with the objective of avoiding paying taxes and maximizing profits[131], frequently in an absolutely legal, but immoral way[132]. This is because tax evasion and avoidance are aimed at reducing or minimizing tax liability, but while tax avoidance is legal, tax evasion is illegal.[133]

This event was succeeded by the *Swiss Leaks*[134], in February 2015; by the *Panama Papers*[135] in April 2016; and more recently by the *Paradise Papers*[136] in October 2017, highlighting the improvement of strategies that exploit gaps and mismatches in fiscal rules to promote the artificial relocation of profits to offshores and avoid paying taxes, generating the loss of billions of dollars to jurisdictions.

Such circumstances have raised worldwide outrage and concern about the negative effects of the process of financial globalization, which has led to the amplification of markets, but at the cost of opening loopholes for large-scale tax misdemeanours and also criminal endeavours[137].

---

131 Huesecken, Birgit and Overesch, Michael (2015), *Tax Avoidance through Advance Tax Rulings – Evidence from the LuxLeaks Firms*, Retrieved from: https://ssrn.com/abstract=2664631

132 Dourado, Ana Paula (2017), *Governação Fiscal Global*, Coimbra: Almedina, p. 43.

133 Prebble, Zoë M. and Prebble QC, John (2010), *The Morality of Tax Avoidance*, Creighton Law Review, Vol. 43, No. 3, Victoria University of Wellington Legal Research Paper No. 9/2012, pp. 693-745, Retrieved from https://ssrn.com/abstract=1650363

134 Swiss Leaks is a collective investigation driven by the ICIJ, with more than 140 journalists in 45 nations to scrutinize 60,000 leaked files. The documents disclosed how the Swiss branch of HSBC, one of the world's chief banking groups, has benefitted from doing business with tax evaders and criminals in a global scale, with explicit details of how the bank was aware of wrongdoing by some clients, amounting a total value held in the bank accounts that at the time exceeded US$100 billion. More information at: https://www.icij.org/investigations/swiss-leaks/

135 As an unprecedented investigation, the Panama Papers revealed offshore connections of some of the world's most noticeable figures. In a joint effort with the German newspaper Süddeutsche Zeitung, the ICIJ and more than a 100 other media partners expended near a year filtering 11.5 million leaked files to depict offshore holdings of world political leaders, drug traffickers, billionaires, celebrities and sports stars associating to global scandals. The scandal also published the names and addresses of the owners of all the shell companies crafted by the Panamanian firm Mossack-Fonseca, at the time a major provider of offshore financial services for two decades along. For more information, see: https://panamapapers.icij.org/

136 The Paradise Papers is a global inquiry into the offshore activities of some of the world's most influential persons and companies, conducted by the ICIJ and other 95 media partners that surveyed 13.4 million leaked files from an arrangement of offshore service providers and company archives on many other offshores jurisdictions. As in the Panama Papers leaks, the files were also attained by the German newspaper Süddeutsche Zeitung. For more information see: https://www.icij.org/investigations/paradise-papers/

137 Stiglitz, Joseph E. (2014), *Reforming Taxation to Promote Growth and Equity*, Roosevelt Institute, White Paper, Retrieved from: http://rooseveltinstitute.org/wp-content/uploads/2014/05/Stiglitz_Reforming_Taxation_White_Paper_Roosevelt_Institute.pdf

In response to the *Panama Papers* leaks, the European Parliament agreed to create the Policy Department on Economic and Scientific Policies for the Committee on Money Laundering, Tax Avoidance and Tax Evasion, named simply after the PANA committee[138] in June 2016, with the aim to promote an investigation on such claimed infringements and misapplication of Union law regarding ML, tax avoidance and tax evasion matters.

The works carried out by the Committee disclosed that the exposé of the Panama Papers was not just a coincidence: individuals and legal entities were clearly abusing offshore structures in order to hide from due taxation or being prosecuted by tax authorities.

The Committee clinched that the amount of tax revenue lost to national authorities in the EU because of the schemes highlighted in the Panama Papers used by individuals was estimated to be between EUR 109 billion and EUR 237 billion in 2015 with a midpoint of EUR 173 billion.[139]

The activities of the Committee were concluded and adopted by plenary vote on 13 December 2017, with the implementation of political recommendations to the Commission and Council in the city of Strasbourg, France.[140]

3.1.2. OFCs and tax havens – a historical development

From the considerations driven above, offshore jurisdictions possess a negative association and are undoubtedly related to tax avoidance, which is considered to be as old as taxation itself. In this sense, it is possible to drive a historically divergence between OFCs and

[138] Unger, Brigitte and Verbeken, Dirk (2017), *Offshore activities and money laundering: recent findings and challenges*, Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy, EU: European Parliament, cit.

[139] European Parliament (2017), *The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Authors: Blomeyer and Sanz *et al*, Brussels: European Union, PE 572.717, Retrieved from http://www.europarl.europa.eu/RegData/etudes/STUD/2017/572717/IPOL_STU(2017)572717_EN.pdf

[140] More information on the European Parliament's 'Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion' (PANA committee), Retrieved from http://www.europarl.europa.eu/committees/en/pana/home.html

tax havens: the latter are considered to be in existence since early 20th century[141] while OFCs are inferred in a much more recent perspective, nearby the 1960s[142].

According to studies, the upsurge of tax havens can be traced back to the creating of the virtual residency concept, by the British courts in 1929. In the case of *Egyptian Delta Land and Investment Co. Ltd. V. Todd*[143], although the company was registered in London, it didn't truly have any activities in the United Kingdom, and consequently could not be subject to British taxation. As explained by Picciotto[144], it was created a "*a loophole which in a sense made Britain a tax haven*".

Since its earliest referrals in history, tax havens have been used as a frequently arrangement to safeguard undertakings by moving the money abroad to escape tax incidence.[145] Offshore locations have been otherwise specifically chosen by companies and individuals as a means to conceal their activities far from their own jurisdiction, and it is precisely this aspect that has drawn criminals ever since[146].

In 1934, fretted with the 1929 Depression that brought the bankrupt of numerous worldwide corporations and specially concerned with the Austrian and German neighbours

[141] Palan, Ronen; Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press, cit.

[142] International Monetary Fund (2007), *Concept of offshore financial centres: In search of an operational definition*, Washington, D.C.: International Monetary Fund, Monetary and Capital Markets Dept, Prepared by Zoromé, Ahmed, p. 4, Retrieved from https://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf

[143] *Egyptian Delta Land and Investment Co. Ltd. v. Todd, (1929), 14 T.C. 119*

[144] Picciotto, Sol (1992), *International Business Taxation, A Study in the Internationalization of Business Regulation*, London: Cambridge University Press, Weidenfeld and Nicolson, Retrieved from https://www.taxjustice.net/cms/upload/pdf/Picciotto%201992%20International%20Business%20Taxation.pdf

[145] As stated by Picciotto, Sol (1999), *Offshore: The State as Legal Fiction*, Offshore Finance Centres and Tax Havens, Edited by Mark p. Hampton and Jason P. Abbott, Palgrave Macmillan, London, pp. 43-79, in the 1920s, prosperous British, Canadian and north-American citizens have produced offshore trusts and holding corporations in the Bahamas and the Channel Islands to shield their wealth from due taxation.

[146] As before mentioned in the chapter regarding the historical and legal background of money laundering (see topic 2.1.1.1. Historical and legal background), first offshore activities too refer to 1920s Al Capone accomplishments and other criminals that, during the American alcohol prohibition period of 1920-1933, drove their illegal profits outside their home state borders in order to shelter them from law enforcement, particularly in USA States of New Jersey and Delaware, known as first to use the practice of attracting non-resident companies by delivering favourable regulatory contexts.

fates, Switzerland[147] approved its Banking Act[148] that in Article 47[149], provided shelter to the Swiss banking system by reinforcing its confidentiality 'obligation' and placing it under the protection of the Penal Code, in spite of any national administration, including Switzerland itself[150].

By ensuring that once passed the borders, assets would enter an uninfringeable legal protection safeguarded by criminal law and supported by national enforcement, along with US State laws and British virtual residency-concept, Swiss bank secrecy became the third column of the tax haven basis.[151] Although the Bank Secrecy Act has been seven times successively amended since its first adoption in 1934, the high penalties for confidential information disclosure remain unaltered.

Following these developments, a few small nations driven by Switzerland began to provide tax havens, such as the small principality of Liechtenstein, located between Switzerland and Austria. Studies imply that a Zurich-Zug-Liechtenstein triangle materialized as the first true European tax haven hub during the 1920s. Luxembourg as well was amid the primary countries to support holding companies[152] activities. Further to this, evidence shows that Bermuda, the Bahamas, Jersey and Panama also served as tax havens during the 2nd interwar phase.[153]

---

[147] Switzerland is considered by most as the grandfather of the world's tax havens, one of the world's largest offshore financial centres, and one of the world's biggest secrecy jurisdictions or tax havens.

[148] *Bundesgesetz über die Banken und Sparkassen* (Bankengesetz, BankG) *vom 8. November 1934* (Stand am 1. Januar 2019) available in German, French and Italian at https://www.admin.ch/opc/de/classified-compilation/19340083/index.html#. Unofficial translation Retrieved from https://assets.kpmg/content/dam/kpmg/ch/pdf/ch-banking-act-en.pdf

[149] Article 47 of the Bank Secrecy Act makes it a federal crime to disclose the information or activity of clients banking domestically to foreign entities, third parties, or even Swiss authorities without either a) consent or b) an accepted criminal complaint. In Switzerland, Swiss banking law prohibits banks from transmitting information about their clients to a third person. In legal terms, banking secrecy is considered a professional secrecy obligation and eventual violation of the bank secrecy is punished with at least 3 years of prison and by fines of 250.000 Swiss francs minimum.

[150] Banking secrecy and bank-client confidentiality was a traditional and a civil offense in Switzerland since the 1770s.

[151] Palan, Ronen; Richard Murphy, and Christian Chavagneux (2010), *Tax havens: how globalization really works*, Ithaca, New York: Cornell University Press, cit.

[152] Under the OECD definition in OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment,* Fourth Edition, OECD Publishing, cit., p. 236, a holding company is "*a company established to hold participation interests in other enterprises on behalf of its owner. Some holding companies may have a substantial physical presence as evidenced by, for example, office buildings, equipment, and employees. Others may have little or no physical presence and may exist only as shell companies*."

[153] Palan, Ronen, Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press, cit.

Tax havens proved sequentially much of valuable after World War II and were recurrently used in order to enable occupied zones such as Germany and Austria to do business overseas.[154]

In 1975, with the oil shock, new arrangements of offshore centres raised to dodge US and European framework context, providing growth of ways of escaping national regulations. With this enactment, the Central Bank lost track and count of economic transactions that were being carried out by corporations thus beginning the financial liberalization era in 1980s.[155]

From this period on, tax havens have proliferated and modernized extensively all over the world, withal to particularly slight inhabited minor island jurisdictions[156], that, in lack of other possible means of economic growth, elected to employ their sovereignty to enable free footloose capital mobility.[157]

3.1.3. Evaluating possible differences among multi-varied terminologies

Even though many authors employ the terms indistinguishably and express no difference between tax havens and OFCs, for some, the different outsets of the two standings discuss the very core of the complexity involved: while OFCs and tax havens are narrowly connected, not every jurisdiction would drop into both taxonomies, considering that only a few could be identified typically as a tax haven or as an OFC. For others, OFCs encompasses both

[154] Through this so-called 'remote-access' device, international companies, for instance Shell and Unilever, could remain doing business transactions in spite of national territorial occupancy by Allied Nations.

[155] Unger, Brigitte and Verbeken, Dirk (2017), *Offshore activities and money laundering: recent findings and challenges*, Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy, EU: European Parliament, cit.

[156] Among them several British crown dependencies (Channel Islands, Jersey, Guernsey and the Isle of Man), prior British colonies (Hong Kong, Singapore, the Bahamas, Bahrain and Dubai), or British Overseas Territories among which the most important tax havens (the Cayman Islands, Bermuda, British Virgin Islands, Turks and Caicos and Gibraltar) that are usually protected by western countries with leading capital marketplaces.

[157] Unger, Brigitte and Verbeken, Dirk (2017), *Offshore activities and money laundering: recent findings and challenges*, Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy, EU: European Parliament, cit.

tax havens and money launderers, considering that they encourage tax evasion and illegal activities on source countries.[158]

Besides the historical differences pointed above, whereas a tax haven does not have a comprehensive and uniform definition, and is generally understood as a jurisdiction that provides tax benefits, an OFC is recurrently referred as a jurisdiction with financial centres or institutions that realize transactions chiefly with non-residents on a weighbridge out of proportion to the extent of its domestic economy.

At the same time, both definitions are in many occasions understood interchangeably as locations that provide ground to financial operatives to promote free flow of capitals from nonresidents and capitalise or loan cash to other nonresidents amidst very little or even completely absence of regulations and taxes.[159]

Assessing different linguistic variances for the definition of this phenomenon, such type of locations may be addressed as well as paradises, refuges or asylums, and some authors speculate that a better label would be to refer not as a tax haven, but rather as a financial one, considering that its features comprises not only levy incentives, but in a wide agenda, diverse and free financial purposes transactions.[160]

3.1.3.1. Tax Havens

Even though there are divergent views on what constitutes a tax haven, the broad acknowledged and sustained depiction was enunciated by the OECD in the Report of 1998[161] which established four main benchmarks for a jurisdiction to be considered as a tax haven, being them: (i) no or only nominal taxation or corporate tax on the relevant income, to non-residents subjects (individuals and companies) principally with the aim to avoid taxation in their

---

[158] Rose, Andrew Kenan and Spiegel, Mark M. (2005), *Offshore Financial Centers: Parasites or Symbionts?*, FRB of San Francisco, Working Paper No. 2005-05, Retrieved from: http://dx.doi.org/10.2139/ssrn.725881

[159] Hampton, Mark P. and Christensen, John (2002), *Offshore Pariahs? Small Island Economies, Tax Havens, and the Reconfiguration of Global Finance*, World Development, 30(9), pp. 1657-1673.

[160] Palan, Ronen, Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press, cit., p. 2.

[161] The Report was approved by the OECD Council on 9 April 1998 and was presented to Ministers on 27 and 28 April 1998. See further at OECD (1998), *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing, Paris, Retrieved from: https://dx.doi.org/10.1787/9789264162945-en, p. 23. Hereinafter: 1998 OECD Report.

home jurisdictions, also considered as the starting point to classify a jurisdiction as a tax haven; (ii) lack of effective exchange of information, considering that tax havens most commonly possess a weak regulation environment in which businesses and individuals benefit from secrecy and confidentiality that may shelter them from due authorities investigation and prosecution, thereby preventing the effective exchange of information; (iii) an absence of transparency in the legislative, legal or administrative operations in order to obstacle home countries to persuade protective actions that most commonly embrace a complimentary normative background for tax evasion and avoidance; and (iv) no substantial activities, translated into the lack of requirements for the transactions that would be developed, to be presence-significant.[162]

In consonance with the European Parliament[163], tax havens supply taxpayers (legal and natural persons) with plenty of options to elect the best geographical location for their wealth – each of them focus on a diverse feature, the extraterritorial locality for offshore centres, and the secrecy or non-disclosure of financial transactions and ownership of resources, in the case of confidentiality dominions.

Truth is, whichever terminology used – tax or financial haven – they all possess in common the main particularity which is to offer a bolthole to evade due taxation, with three main characteristics: (i) low or no taxation incidence; (ii) a fictitious residence (with no reality correspondence); and (iii) tax secrecy (hence comprising exchange of information and transparency). By offering secrecy, opacity, anonymity, and a no or insignificant levy on income and capitals, low-tax jurisdictions enable the structure of activities in accordance to the tax base and open loopholes for tax avoidance and unlawful performances, specially money laundering and terrorism financing.[164]

[162] European Parliament (2017), *The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Authors: Blomeyer and Sanz et al, Brussels: European Union, PE 572.717, cit., p. 24.

[163] European Parliament (2018), *Listing of tax havens by the EU*, European Parliamentary Research Service, Members' Research Service, Author: Cécile Remeur, Brussels: European Union, PE 621.872, Retrieved from http://www.europarl.europa.eu/cmsdata/147404/7%20-%2001%20EPRS-Briefing-621872-Listing-tax-havens-by-the-EU-FINAL.PDF

[164] European Parliament (2017), *Understanding the rationale for compiling 'tax haven' lists*, European Parliamentary Research Service, Members' Research Service, Author: Cécile Remeur, Brussels: European Union, PE 614.633, Retrieved from http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614633/EPRS_BRI(2017)614633_EN.pdf

On the other hand, it is important to point out that under the current OECD view, the politically correct term would be no longer tax havens, but non-cooperative tax jurisdictions or non-cooperative countries and territories (NCCTs). It is so because in 2009 the OECD announced that "*the era of tax havens had come to an end*" and there are presently no jurisdictions listed as unabridged unco-operative tax havens by the OECD's Committee on Fiscal Affairs.[165]

3.1.3.2. Offshore Financial Centres

According to the IMF, an OFC can be defined in a large encompassment as "any financial centre where offshore activity takes place"[166]. From a more practical delineation, an OFC is considered as "a centre where the bulk of financial sector activity is offshore on both sides of the balance sheet, (that is the counterparties of the majority of financial institutions liabilities and assets are non-residents), where the transactions are initiated elsewhere, and where the majority of the institutions involved are controlled by non-residents."[167] From this standpoint, repeatedly offshore financial markets are used as a definition of a wholesale international financial market, such as what was known in the past as the Eurodollar market.[168]

In this view, OFCs are commonly implied as "(i) jurisdictions that have relatively large numbers of financial institutions engaged primarily in business with non-residents; (ii) financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies; and more popularly, (iii) centres which provide some or all of the following services: low or zero taxation; moderate or light financial regulation; banking secrecy and anonymity."[169]

---

[165] Information by the OECD site on List of Unco-operative Tax Havens, Retrieved from http://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm

[166] International Monetary Fund (2000), *Offshore Financial Centers*, IMF Background Paper, Prepared by the Monetary and Exchange Affairs Department, Retrieved from https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm#II

[167] The International Monetary Fund also refers to the term offshore finance as the prearrangement of financial services provided by banks and other agents to non-residents, that for oftentimes include the lending of assets to non-residents from non-residents.

[168] Palan, Ronen, Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press, cit.

[169] International Monetary Fund (2000), *Offshore Financial Centers*, IMF Background Paper, Prepared by the Monetary and Exchange Affairs Department, cit.

Under a simpler definition, an OFC is a country or jurisdiction that delivers financial services[170] to nonresidents on a proportion that is inconsistent to the size and the financing of its national economy.[171]

The OECD literature on the subject establishes than an OFC are "countries or jurisdictions with financial centres that contain financial institutions that deal primarily with nonresidents and/or in foreign currency on a scale out of proportion to the size of the host economy". In this role, nonresident-owned or -controlled institutions perform a noteworthy position within the centre and the parties within the centre could benefit from tax welfares that are not accessible to those outside the centre.[172]

In a wide-range assessment, it is possible to point out a series of elements that may connect cross-border investors to offshores jurisdictions, which are: (i) the incidence of foreign citizen residents; (ii) the position of the jurisdiction in the global trade network; (iii) the aptitude to magnetize foreign direct investments (FDI)[173]; (iv) the efficiency of regulations and the role of the administration authorities; (v) lower tax rates and corporate tax incentives[174]; and (vi) lack of transparency to conceal beneficial ownership.[175]

Considering the key tenacity of OFCs is to offer financial services to nonresidents and to export them, earnings from these transfers archetypally derive from: financial services owed to nonresidents by entities that are domiciled offshore; bank fees for advisory services

---

[170] In this definition, financial services should include financial services and insurance services (except freight insurance), as defined by the United Nations (2002), *Manual on Statistics of International Trade in Services*, United Nations Publications: New York. Nonetheless, insurance services were not included for most balance of expenditures assents could not provide breakdowns that the exclusion of freight insurance was possible.

[171] International Monetary Fund (2007), *Concept of Offshore Financial Centers: In Search of an Operational Definition*, IMF Working Paper, Monetary and Capital Markets Department, Prepared by Ahmed Zoromé. Authorized for distribution by R. Barry Johnston, p. 7, Retrieved from https://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf

[172] International Monetary Fund (2003), *External Debt Statistics: Guide for Compilers and Users*, Appendix III, Glossary, Washington DC: IMF, Retrieved from https://stats.oecd.org/glossary/detail.asp?ID=5988

[173] Under the OECD definition in OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment*, Fourth Edition, OECD Publishing, p. 234, cit., a FDI is "*a category of investment that reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor*."

[174] OECD (2001), *Corporate Tax Incentives for Foreign Direct Investment*, OECD Tax Policy Studies No. 4, Paris: OECD.

[175] Savona, Ernesto U. and Riccardi, Michele et al (2017), *Assessing the risk of money laundering in Europe*, Final Report of Project IARM, Milano: Transcrime – Università Cattolica del Sacro Cuore, Retrieved from: http://www.transcrime.it/wp-content/uploads/2017/05/ProjectIARM-FinalReport.pdf

and financial manufacturing; intermediary service fees – lines of credit, financial leasing and foreign exchange; commissions on funds administration and securities services – brokerage, placement of bond issues, underwriting, arrangement of swaps, options and other hedging appliances; transactions associated to asset management; security custody services; and registration/renewal bills for licensed units – offshore banks, insurance companies, collective investment vehicles, international business companies, trusts and States. Since handovers of financial wealth to OFCs are repeatedly unregistered, these structures may equally convey non-financial services, such as of aircraft, brands, patents and copyright registrations.[176]

CHAPTER 2 – MONITORING THE GREY ZONE

The chart of jurisdictions that are labelled under tax havens, offshores jurisdictions, non-cooperative countries and territories or high-risk countries is continuously under review.

From this perspective, numerous States, international and non-governmental organisations ascertain lists of tax havens or high-risk countries[177], also called by many as the 'name and shame' approach, as a first step to halt detrimental accomplishes that occur by the gaps resulting from worldwide mismatches of financial movements that surpass the national boundaries reach.

The tenacity of diagramming up such lists serves as a means of encouragement to jurisdictions that choose to not comply with the elected measures (guidelines, criteria or principles) to ratify them in order to be de-listed. In a matter of facts, 'black' listing is the approach several organisations chose as a means to ensure regulatory compliance is met. As previously stated by Braithwaite in 1989, "*shaming is a route to a freely chosen compliance*"[178].

In this context, standards are established as in or out criteria by the members of the organisation which arranges the list, as a form of setting rules to join, gain or remain with the

[176] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit., p. 117.
[177] Palan, Ronen, Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press report at least eleven distinctive lists of tax havens, cit.
[178] Braithwaite, John (2007), *Crime, shame and reintegration*, Cambridge: Cambridge University Press, p. 10, Retrieved from: Retrieved from http://johnbraithwaite.com/wp-content/uploads/2016/06/Crime-Shame-and-Reintegration.pdf

membership – in other words, as to become or stay part of the club, one must embrace and follow the rules.

Sundry reproaches have been drawn up for the 'naming and shaming' procedure by numerous authors[179] who outline that plentiful jurisdictions have the structure and / or features of tax havens and yet have not been mentioned or listed within official organisations assessments.[180]

In this sense, the listing stratagem has been several times criticized of being incomplete[181], considering that specific large and prevailing economies are recurrently omitted and politics may also interfere in the legitimacy, transparency and in an up-to-date evaluation.[182] Nonetheless, the listing procedure endures to be an important tool in providing a worldwide standard for monitoring the so-called grey zone.

3.2.1. Tax havens, offshore jurisdictions and non-cooperative countries lists

Since the end of 1990, the IMF has been delivering assorted offshore lists assessment that are continuously established on the basis of predefined benchmarks from numerous international bodies.[183]

[179] For instance, the work of Palan, Ronen, Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press, cit., suggests adding Belgium, the Netherlands and Luxembourg as a location for holding companies in Europe. They also bring into discussion aspects of rules in the United States and the United Kingdom that might justify identification as prominent tax havens.

[180] Gravelle, Jane G. (2015), *Tax Havens: International Tax Avoidance and Evasion*, USA: Congressional Research Service, Retrieved from https://fas.org/sgp/crs/misc/R40623.pdf

[181] In Rawlings, G. and Sharman, J. C. (2006), *National Tax Blacklists: A comparative Analysis*, Journal of International Taxation, Vol. 17, No. 9, pp. 38-47 and 64, after a careful assessment of different blacklists, the authors pointed out why some countries appeared on a blacklist while others did not. In this sense, the authors concluded that lists adopted by countries "*tend to be out of date, inaccurate, and arbitrary*" and that "*the methodologies used to compile blacklists are often opaque and do not tend to follow any formal procedure*."

[182] Unger, Brigitte and Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, Retrieved from https://www.uu.nl/sites/default/files/rebo_use_dp_2008_08-12.pdf

[183] International Monetary Fund (2014), *Staff Assessments on Offshore Financial Centres (OFCs)*, Last Update: November 20, 2014, Retrieved from https://www.imf.org/external/NP/ofca/OFCA.aspx

Concerned with the emergence of financial centres and the consequent global financial flows that could possibly damage the world's financial stability, the first blacklist related to ML and countries and territories with OFCs, was published by the IMF, in 1999[184].

Taking into account that the Fund's foremost distress is a financial steady environment, to identificate jurisdictions that provide financial services may be suitable for its purposes, but it might also deliver an overlook on dominions that work as central facilitators of money laundering, terrorist financing, tax evasion and avoidance.[185]

Amongst non-governmental entities prominent works, it is of most relevance the efforts briefed by the Tax Justice Network (TJN)[186], that conducts a score-based banking secrecy measurement, considering the capacity to craft shell companies, offshore arrangements, and obstacles to cooperation and exchange of information. Since 2009 and biennially, the TJN publishes its Financial Secrecy Index (FSI), a list that ranks jurisdictions according to their secrecy and the gamut of their offshore financial activities, probably the largest list of tax havens, and includes some specific cities and areas, among them EU jurisdictions and the United Kingdom[187].

---

[184] International Monetary Fund (2000), *Offshore Financial Centers*, IMF Background Paper, Prepared by the Monetary and Exchange Affairs Department, cit.

[185] In International Monetary Fund (1999), *Offshore Banking: An Analysis of Micro- and Macro-Prudential Issues*, prepared by Luca Errico and Alberto Musalem, IMF Working Paper, Retrieved from https://biblio.parlament.ch/e-docs/360550.pdf it is clarified that "*a number of factors ranging from favourable regulatory frameworks and convenient fiscal regimes, to the possibility of engaging in illegal activities, including money laundering, continue to attract business to OFCs. (…) OFCs are jurisdictions where offshore banks are exempt from a wide range of regulations which are normally imposed on onshore institutions. (…) Countries may decide to establish OFCs for a number of reasons, including gaining access to international capital markets, attracting needed foreign technical expertise and skills, and introducing an element of competition in domestic financial systems while, at the same time, somewhat sheltering domestic institutions*."

[186] The TJN is an independent international network launched in 2003 that provides high-level research, analysis and advocacy on international tax; on the international aspects of financial regulation; on the role of tax in society; and on the impacts of tax evasion, tax avoidance, tax 'competition' and tax havens. See further at https://www.taxjustice.net/

[187] Annual update of the TJN's Financial Secrecy Index Retrieved from https://www.financialsecrecyindex.com/

Oxfam International[188] and the aforementioned ICIJ also advance imperative accomplishments in offshores investigating activities, specially through the breakout of financial leaks that they continuously provide[189].

In early 2000s, among the eighty-four jurisdictions conventionally scrutinised by the OECD, the Organisation categorized a list of uncooperative tax havens in agreement to the above-mentioned elected criteria. Until 2002, thirty-one countries pledged to comply with the OECD established benchmarks of transparency and exchange of information.

Nevertheless, at that time seven jurisdictions[190] did not make any engagements to transparency and exchange of information standards and remained as 'blacklisted' uncooperative tax havens until the following years: Nauru and Vanuatu made their commitments in 2003; Liberia and the Marshall Islands in 2007; and Andorra, the Principality of Liechtenstein and the Principality of Monaco only in May 2009.

Following the intervention of the Group of 20 (G20)[191], the former 'black list' was sequentially extended to a 'grey' and 'white' list, in accordance with the level of commitments that were made, and respective timetable of implementation assumed by jurisdictions.[192]

In 2009, following the G20 London Summit, the OECD reallocated Uruguay, Costa Rica, the Philippines and Malaysia from the 'black' list of its uncooperative tax havens to the 'grey' list of jurisdictions that have pledged to the internationally agreed tax standard, but at that time, had not yet substantially implemented it.

---

[188] On 28 November 2017, Oxfam broadcasted its previsioned list of assessed tax havens concerning transparency, fair taxation and participation in international fora on tax matters, outlined in the establishing of the EU list by the Council, Retrieved from https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620625/bn-off-the-hook-eu-tax-havens-070319-en.pdf

[189] See topic 3.1.1. Financial scandals.

[190] The jurisdictions acknowledged in April 2002 by the OECD's Committee on Fiscal Affairs as uncooperative tax havens were then Andorra, The Principality of Liechtenstein, Liberia, The Principality of Monaco, The Republic of the Marshall Islands, The Republic of Nauru and The Republic of Vanuatu.

[191] Founded in 1999, the Group of Twenty is a worldwide forum for the governments and central bank governors from 19 nations and the European Union, and as of 2017 comprises Argentina, Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, the United Kingdom, and the United States. Spain has the status of a permanent guest invitee.

[192] The OECD currently beholds three lists: (i) a white list of jurisdictions that are currently implementing or have already absorbed the agreed-upon standard; (ii) a grey list of jurisdictions that have committed to the internationally agreed tax standards; and (iii) a black list of countries that have not committed.

On that opportunity, Switzerland and other countries such as Luxembourg and Belgium were then included in the so-called 'grey' list, for they did not yet have fulfilled the OECD requirements on exchange of tax related information.[193] In the same year, the Swiss government swifted to implement the OECD criteria by signing twelve Double Taxation Agreements (DTAs) enclosing a section on extended administrative assistance in tax matters[194], in order to comply with minimum regulation as to be removed from the OECD 'grey' index.

At the EU level, the Council of the European Union, reinforcing the overbearing importance to supply effective strengthening apparatuses to fight the erosion of Member States' tax bases through tax fraud, evasion and avoidance; and in line with the agenda upheld by the G20, the OECD and other international *fora*, once per calendar year, correspondingly establishes a list of EU non-cooperative jurisdictions for tax purposes, as an apparatus to guarantee a level competing ground[195].

Considering the OECD hasn't succeeded in deliver an agreed jurisdictions enlistment after 2009, the EU has then surpassed the Organisation on stablishing a standard, by contributing with a pondered satisfactory work outcome by most involved participants[196].

After a careful deliberation by the Commission and first settled by Member States in December 2017, the EU started its own list based on a four-step process of selecting, screening, listing and monitoring (or a three-step process of scoreboard, screening and listing[197]) as a device to encourage transformations in a wide-reaching tax common practice.[198]

[193] As explained by Senior Specialist in Economic Policy, Gravelle, Jane G. (2015), *Tax Havens: International Tax Avoidance and Evasion*, USA: Congressional Research Service, cit., to be listed as a tax haven may result in legal implications if laws and sanctions are contingent on this assessment, besides potential sanctions that may be taken by international bodies.

[194] The Federal Council, Portal of the Swiss government, Switzerland removed from the OECD 'grey list', Bern, 24.09.2009, Retrieved from https://www.admin.ch/gov/en/start/dokumentation/medienmitteilungen.msg-id-29205.html

[195] Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Brussels, 22 November 2018 (OR. en), 6237/4/18 REV 4, FISC 69, ECOFIN 122, Retrieved from https://data.consilium.europa.eu/doc/document/ST-6237-2018-REV-4/en/pdf

[196] Dourado, Ana Paula (2018), *The EU Black List of Third-Country Jurisdictions*, Intertax, Vol. 46, Issue 3, pp. 178–180.

[197] As clarified by Dourado, Ana Paula (2018), *The EU Black List of Third-Country Jurisdictions*, Intertax, 46, No. 3, cit., p. 178, the three-step process and based on objective criteria and transparency provided the foundation of the recent outcome of a procedure that started in 2016.

[198] Council of the European Union, Council Conclusions on the EU list of non-cooperative jurisdictions for tax purposes, Brussels, 5 December 2017 (OR. en), 15429/17, FISC 345, ECOFIN 1088, Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XG1219(01)andfrom=EN, Hereinafter: December 2017 EU list of non-cooperative jurisdictions.

The first EU list of non-cooperative jurisdictions for tax purposes 'blacklisted' seventeen jurisdictions[199] and put further forty-seven countries on notice in a 'grey-list'[200]. The benchmarks diagrammed in the external strategy pointed out three central aspects that should be taken into account[201]: (i) transparency, to be achieved through compliance with the international standards on automatic exchange of information (AEoI) and exchange of information on request (EoIR)[202], especially with the scrutiny if a jurisdiction has ratified or deposited the multilateral convention[203]; (ii) fair tax competition, as in assessing the existence of harmful tax regimes, contrary to the Code of Conduct principles or the OECD's Forum on Harmful Tax Practices; and finally (iii) the BEPS implementation package[204] by stablishing deadlines for jurisdictions to become members (or if and when such commitment will become relevant to the Inclusive Framework or implement BEPS minimum standards)[205].

[199] According to the Annex I of the December 2017 EU list of non-cooperative jurisdictions, the list was then composed by American Samoa; Bahrain; Barbados; Grenada; Guam; Korea (Republic of); Macao SAR; Marshall Islands; Mongolia; Namibia; Palau; Panama; Saint Lucia; Samoa; Trinidad and Tobago; Tunisia; and United Arab Emirates.
[200] Annex II of the December 2017 EU list of non-cooperative jurisdictions provides a comprehensive State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles.
[201] European Parliament (2018), *Listing of tax havens by the EU*, European Parliamentary Research Service, Members' Research Service, Author: Cécile Remeur, Brussels: European Union, PE 621.872, cit.
[202] See topic 4.3.1.1. Exchange of information mechanisms.
[203] As explained in OECD (2015), *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*, Action 15 – 2015 Final Report, OECD / G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, Retrieved from http://dx.doi.org/10.1787/9789264241688-en, the final report of Action 15 of the BEPS package encapsulates the upgrowth of a Multilateral Instrument (MLI) to promptly and efficiently amend the current ruling bilateral tax treaties. As a multilateral tool, it offers an innovative approach that allows countries to hastily modify more than 3000 existing double taxation conventions to implement the measures unfolded throughout the BEPS project work. In the era of globalization, the MLI represents the apex of a response promoted by the majority share of the countries in the world, to a common problem, as a way to find a solution that meets or at least takes into account the individual circumstances collectively. On 22th of March 2018, the OECD announced the deposit of the fifth instrument of ratification by Slovenia following those already deposited by Austria, Isle of Man, Jersey and Poland, with the Multilateral Convention entering into force on 1st July 2018.
[204] In more recent times, the OECD has centralized attention on its Base Erosion and Profit Shifting (BEPS) project. At a first step, the BEPS Action Plan seeks to identify the main scopes related to the erosion behaviour of tax bases and the relocation of revenues. As a tool for study and assessment, it comes with a series of recommendations, initially at the soft law level, of which measures the States should take to skirmish the negative consequences of globalization in international taxation. The final reports on the fifteen OECD actions against BEPS were released on October 5, 2015, coordinating a range of commitments to be assumed by the States to re-establish fiscal justice, as a way of ensuring that the tax is duly levied in the country where the activities occur, and the values are generated. For more information on BEPS, see OECD (2015), *Explanatory Statement*, 2015 Final Reports, OECD/G20, Base Erosion and Profit Shifting Project, Paris: OECD Publishing, Retrieved from https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf
[205] Annex II of the December 2017 EU list of non-cooperative jurisdictions.

The lists are composed by an Annex I, comprising an EU list of non-cooperative jurisdictions for tax purposes – the so-called 'blacklist', and an Annex II, concerning the state of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles. In line with the Council conclusions, the Code of Conduct Group (Business Taxation)[206] is entrusted to form review panels with representatives of the EU Member States and the European Commission, in order to provide with the procedures of screening and listing of 92 jurisdictions that have been previously pointed out by the Code of Conduct Group.

In January 2018, the EU delisted eight of the seventeen abovementioned blacklisted jurisdictions[207] in addition of commitments made at a high-pitched political level to answer EU's distresses[208]. In the May 2018 List[209], Bahamas and Saint Kitts and Nevis were de-listed and were then considered as non-cooperative jurisdictions for tax purposes American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago and US Virgin Islands. By confronting hazards due to tax abuse and biased tax competition, on 11th of October, the Council of the EU published a reviewed list[210] excluding Palau; and on the 31 October 2018 List, Namibia was then excluded[211].

---

[206] The Resolution on the Code of Conduct for Business Taxation was introduced on 1 December 1997 by the Council and the representatives of the governments of the Member States with the purpose to restrain harmful tax competition. Although it is not a legally binding device, but a political commitment assumed by Member States, its main intents are to revise, amend or obliterate standing tax measures that might constitute harmful tax competition (called the rollback process); and also withhold the upsurge of new ones in the future (known as the standstill process). For further information on the Code of Conduct Group, see https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group

[207] Dourado, Ana Paula, and Wattel, Peter (2018), *Third States and External Tax Relations*, Update and elaboration, Eds. Marres, Vermeulen, Wattel), Terra / Wattel European Tax Law, Volume I – General Topics and Direct Taxation, Kluwer, p. 214.

[208] Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting the de-listing of certain jurisdictions, Brussels, 12 January 2018 (OR. en), 5086/18, LIMITE, FISC 9, ECOFIN 7, Retrieved from http://data.consilium.europa.eu/doc/document/ST-5086-2018-INIT/en/pdf

[209] Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of two jurisdictions, Brussels, 8 May 2018 (OR. en), 8304/1/18, REV 1, LIMITE, FISC 178, ECOFIN 356, Retrieved from https://www.consilium.europa.eu/media/35569/st_8304_2018_rev_1_en.pdf

[210] Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Brussels, 11 October 2018 (OR. en), 6237/3/18, REV 3, FISC 69, ECOFIN 122, Retrieved from https://data.consilium.europa.eu/doc/document/ST-6237-2018-REV-3/en/pdf

[211] Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of one jurisdiction, Brussels, 31

On 12th of March 2019, the EU Finance Ministers delivered an updated EU list of non-cooperative tax jurisdictions, centred on a vigorous effort to promote a profound inquiry of 92 countries by the Commission that takes into account a three-based assessment benchmark: (i) tax transparency; (ii) good governance and (iii) genuine economic activity, as well as the existence of a zero corporate tax rate metre.

This analysis provides a prodigious panorama on worldwide established tax good governance touchstones, for over 60 jurisdictions have compliantly adopted the Commission's standards and more than 100 detrimental governments have been abolished.

The revision of March 2019 added ten more jurisdictions to the so-called 'black-list': Barbados, United Arab Emirates and Marshall Islands that were on the December 2017 EU list of non-cooperative jurisdictions but were then moved to the 'grey list' following commitments they had taken, but have now returned to be blacklisted for not having followed up and supplementary seven States that were moved from the grey list to the blacklist for the same reason: Aruba, Belize, Bermuda, Fiji, Oman, Vanuatu and Dominica.[212]

The 34 currently grey listed jurisdictions will continue to be watched through the year.[213]

October 2018 (OR. en), 13352/1/18, REV 1, FISC 423, ECOFIN 949, Retrieved from http://data.consilium.europa.eu/doc/document/ST-13352-2018-REV-1/en/pdf

[212] Council of the European Union, The revised EU list of non-cooperative jurisdictions for tax purposes – Council conclusions, Brussels, 12 March 2019 (OR. en), 7441/19, FISC 169, ECOFIN 297, Retrieved from https://data.consilium.europa.eu/doc/document/ST-7441-2019-INIT/en/pdf, Hereinafter: March 2019 EU list of non-cooperative jurisdictions for tax purposes.

[213] According to the March 2019 EU list of non-cooperative jurisdictions for tax purposes, the following three pillars should be considered: (i) transparency valuation: by the end of 2019 Palau and Turkey are committed to implement automatic exchange of information; Anguilla and Curaçao are waiting for a supplementary review by the Global Forum for they committed to have a sufficient rating by the end of 2018; Jordan, Namibia, Palau, Turkey and Vietnam are committed to become member of the Global Forum and/or have a sufficient rating by the end of 2019; Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Eswatini, Jordan, Maldives, Mongolia, Montenegro, Morocco, Namibia, North Macedonia, Palau, Serbia, Thailand and Vietnam are committed to sign and ratify the OECD Multilateral Convention on Mutual Administrative Assistance (MAC) or network of agreements covering all EU Member States or to have in place a network of agreements covering all EU Member States by the end of 2019; (ii) in the fair taxation standard: Costa Rica and Morocco were granted until end 2019 to adapt their legislation since they committed to amend or abolish their harmful tax regimes covering manufacturing activities and similar non-highly mobile activities by the end of 2018 and demonstrated tangible progress in initiating these reforms in 2018; Cook Islands, Maldives and Switzerland were granted until the end of 2019 to adapt their legislation for they have committed to amend or abolish their harmful tax regimes by the end of 2018 but were prevented from doing so due to genuine institutional or constitutional issues despite tangible progress in 2018; Namibia is committed to amend or abolish the identified harmful tax regimes by 9 November 2019; Antigua and Barbuda, Australia, Curaçao, Mauritius, Morocco, Saint Kitts and Nevis, Saint Lucia and Seychelles; Jordan is committed to amend or abolish harmful tax regimes by end 2020; Bahamas, British Virgin Islands and Cayman Islands were granted until the end

Although ten new jurisdictions have been added from the 2018 end-of-the-year list, 25 countries from the original assessment have now been cleansed. On the other hand, it may be considered wearisome to come back to a blacklist assessment when in 2009 the OECD publicized that "*the era of tax havens had come to an end*" [214].

3.2.2. AML / CFT regimes and high-risk third-country monitoring lists

The elaboration of high-risk third country lists offers an important evaluation of menaces concerning money laundering and terrorist financing. By concentrating their assessment on legal and institutional gauges and including confidentiality and secrecy, they provide a widespread analysis on elected criteria also used in the scrutiny of tax havens and OFCs.

On that account, the 4th AML / CFT Directive forecasts, in its section three, Article 9, that third-country jurisdictions in possess of strategic deficiencies in their domestic AML / CFT administrations that represent considerable hazards to the financial system of the Union ('high-risk third countries') must be identified in order to safeguard the good functioning of the internal market.

In order to do so, Article 9(2) stipulates that the European Parliament and of the Council shall sanction the Commission to adopt delegated acts in accordance with Article 64[215] in order to detect high-risk third countries, taking into consideration strategic deficiencies, in particular related to: (a) the legal and institutional AML / CFT framework of the third country, especially regarding: (i) criminalisation of ML and TF; (ii) measures involving customer due diligence (CDD); (iii) provisions concerning record-keeping; and (iv) presuppositions to report

---

of 2019 to adapt their legislation considering they have committed to address the concerns relating to economic substance in the area of collective investment funds, have engaged in a positive dialogue with the Group and have remained cooperative, but require further technical guidance; and (iii) Anti-BEPS Measures: Albania, Bosnia and Herzegovina, Eswatini, Jordan, Montenegro, Morocco and Namibia are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards by the end of 2019; Nauru, Niue and Palau are committed to become member of the Inclusive Framework on BEPS or implement OECD anti-BEPS minimum standards if and when such commitment will become relevant.

[214] In fact, as of current date, there are no jurisdictions listed as unabridged uncooperative tax havens by OECD's Committee on Fiscal Affairs. Information by the OECD site on List of Unco-operative Tax Havens, Retrieved from http://www.oecd.org/countries/monaco/list-of-unco-operative-tax-havens.htm

[215] In a general overview, Article 64 of the 4th AML / CFT Directive summarizes the form and limits of empowerment delegated that are foreseen in the Directive.

suspicious transactions; (b) the powers and procedures of the third country's competent authorities for the purposes of contending ML or TF; and (c) the efficiency of the AML / CFT system in addressing its risks of the third country. Also, it is stablished on Article 9(3) a tight one-month schedule adoption of the list after the identification of the strategic deficiencies.

Lastly, the Directive outlines in Article 9(3) that the Commission should consider, when drawing up the delegated acts, relevant evaluations, assessments or reports drawn up by international organisations and standard setters with competence in the field of preventing money laundering and combating terrorist financing, in relation to the risks posed by individual third countries.

For the purpose of this specific achievement, the 5th AML / CFT Directive expressively empowered the Commission to adopt delegated acts in order to identify high-risk third countries, taking into account strategic deficiencies in particular with (i) legal and institutional AML / CFT framework of the third country; (ii) the powers and procedures of the third country's competent authorities for the purposes of combating money laundering and terrorist financing including appropriately effective, proportionate and dissuasive sanctions; and (iii) the effectiveness of the third country's AML / CFT system in addressing money laundering or terrorist financing risks.[216]

In this context, the FATF occupies a central role as an international standard-setter regarding activities that generate considerable illicit flows of finance, such as tax evasion, fraud, corruption and especially ML and TF.

As previously explained, in 1990, the FATF fulfilled a series of forty Recommendations[217] that governments should apply to ensure that effective AML programs are in place. In the lapse of time comprised between the years of 1996 and 2003, these recommendations were then reviewed to follow new developments, especially new money laundering practices that continue to upsurge. If fully implemented, these Recommendations should provide a country with a comprehensive agenda for successful AML countermeasures.

Among others, the Recommendations comprise a broad definition of ML and the predicate crimes for laundering, the areas that need to be supervised more severely, and the regulatory institutions and international cooperation in most necessity.

[216] Article 1(5)(a) of the 5th AML / CFT Directive.
[217] FATF Recommendations, cit.

By periodically identifying high-risk and non-cooperative jurisdictions in the AML / CFT arena, the FATF provides a worldwide observed list (known as the FATF-blacklist) and hence, used as a reliable resource by the aforementioned Directives at the EU level. The main purpose of FATF's listing procedure is to put blacklisted jurisdictions beneath forceful international financial pressure, by engaging the 'name and shame' tactic as to harvest the so-called 'stigma effect'.[218]

The twenty-five score-based 'Criteria for Identifying Countries and Territories Non-Cooperative in Anti-money Laundering and Terrorist Financing' were developed ten years later after the release of the forty Recommendations and, therefore, are fundamentally centred on them.

The public assessment gives a wholesome summary of the strengths and flaws of the AML strategy executed by each country for it takes into account the degree of compliance of jurisdictions with the Recommendations, and include a full description of the currently procedure used by countries to combat ML, plus efforts that have been already made.

When accrediting scores, which may vary from fully compliant (FC), largely compliant (LC), partly compliant (PC), not compliant (NC) and also include the possibility of a not applicable (NA) score, the FATF takes the financial liability of a specific country into consideration. In other words, the same policy could be evaluated as a LC for a developing country, while it is measured as a PC for a developed country.[219]

Jurisdictions presently considered by the FATF[220] as in possess of tactical deficiencies regarding the compliance mandatory of AML / CFT standards are the Bahamas, Botswana, Cambodia, Ethiopia, Ghana, Pakistan, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia and Yemen[221].

---

[218] Masciandaro, Donato (2013), *Is the Anti Money Laundering Compliance Convenient?*, IDB Discussion Paper Series, Inter-American Development Bank, Washington D.C., No. 311.

[219] Unger, Brigitte; Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, cit.

[220] The FATF's work operates as a source for a parallel list pinched in Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016, that supplemented Directive (EU) 2015/849 of the European Parliament and of the Council, by pinpointing high-risk third countries with strategic deficiencies. The list was supplementary revised by Delegated Regulation (EU) 2018/105 of 27 October 2017 and Delegated Regulation (EU) 2018/212 of 13 December 2017, both amending Delegated Regulation (EU) 2016/1675.

[221] FATF (2019), *Improving Global AML / CFT Compliance: On-going Process*, FATF, Paris, France, Retrieved from http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2019.html

In February 2019, the FATF stated publicly that the Democratic People's Republic of Korea is considered a dominion subject to the FATF members and other jurisdictions that require counter-measures to safeguard the international financial system from the enduring and extensive ML and TF risks, and that Iran territory demands augmented due diligence measures proportionate to the constant risks surfacing from this country.[222]

Finally, it is important to observe that for banking institutions, arrangements with obscure financial transactions can seriously intensificate reputational risks[223]. However, "*the fear to loose reputation by being open for criminal money seems to be larger than the reputation loss for being a tax haven*"[224], which means, occasionally, countries succeed to get removed from the money laundering list, while many of them still belong to a black or grey tax haven list.

It is so for jurisdictions are worried with the integrity of their financial markets since it is not moral to be known as a tax haven, but it is completely intolerable to be associated with illegal money or totalitarian's wealth investments. Whilst tax evasion is in many countries still pondered stern but not completely catastrophic, cooperating with organized crime definitely is.

PART IV

THE PRISM OF FISCAL EFFICIENCY

CHAPTER 1 – UNDERSTANDING THE FISCAL EFFICIENCY PROBLEM

The study of the Principle of Efficiency had its first developments in the legal sphere from the advanced notions in the field of economic sciences, namely in the economic

---

[222] FATF (2019) *FATF Public Statement*. FATF, Paris, France. Retrieved from http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2019.html

[223] Balakina, Olga; D'Andrea, Angelo and Masciandaro, Donato (2016), *Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?*, Baffi Carefin Centre, Research Paper No. 2016-20, Retrieved from: http://dx.doi.org/10.2139/ssrn.2777380

[224] Unger, Brigitte; Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, cit.

analysis of law. In this sense, the key point that determines its concept takes into account the society's use of the lowest possible consumption of available goods, with the scope to obtain the best profit; in other words, to ponder the maximization of scarce resources in balance with the perspective of equality.

In a broader outlook, the economic discussion on the role of the State was conducted in terms of market failures, emphasized by those who wished to justify a larger role; or, in terms of government failure, emphasized by those who wished to limit their power.[225] Public intervention should contribute to the reduction or elimination of market failures[226] by producing the public necessary goods to meet basic collective needs in order to moderate the exploitation of common resources, promoting the alignment or elimination of negative externalities.

Keeping in mind the focus of these two realities – efficiency and equality –, it is necessary to verify how this problem can be transposed into a fair, balanced and efficient model. In this scope, in an efficiency perspective, the tax system must always collect taxes in the least destructible way, that is, a country's administration must obtain revenues without incurring in the destruction of the assets of each individual.[227] That is why tax systems should seek fair taxation and economic efficiency in order to promote Social Welfare.[228]

To these ends, the core of international tax laws of wealthier countries on pursuing capital neutrality may possibly open doors or aggravate the need for poorer countries to perform as tax havens. In this sense, a 'capital neutrality paradox model' would demonstrate that the very chase of capital neutrality may upshot in more jurisdictions to provide free flow transactions, but at the cost of effectively undermining worldwide efficiency.[229]

[225] Stiglitz, Joseph (1995), *Role of Government in the Contemporary World*, Paper presented at the IMF Conference on Growth and Income Distribution, Washington, DC.
[226] Here understood as the failure of a market to deliver an optimal result.
[227] In the words of Louis XIV's finance minister, Jean-Baptiste Colbert, "*the art of taxation is to pluck the goose as to obtain as many feathers as possible with as little hissing as possible*." Translated from the French "*L'art de l'imposition consiste à plumer l'oie pour obtenir le plus possible de plumes avec le moins possible de cris*."
[228] Lobo, Carlos Baptista (2008), *Sectores em rede: regulação para a concorrência*, Faculdade de Direito da Universidade de Lisboa.
[229] Rosenzweig, Adam H. (2010), *Why are There Tax Havens?* William and Mary Law Review, Vol. 52, No. 3, 2010; Washington University in St. Louis Legal Studies Research Paper No. 10-11-03. Retrieved from: https://ssrn.com/abstract=1718184

4.1.1. Pareto efficient tax structures

Before investigating possible solutions to the complications of modern international tax regimes, it is essential to consider why such a setback has occurred in the first place. Bearing this in mind, it is possible to speculate that the purpose of the tax system is the initiative of the social optimality.

In economics field, the optimality concept was drawn up by Wilfried Pareto[230]. Following the works of his predecessor Léon Walras, through a Pareto efficiency (or Pareto optimality comprehension), a competitive market economy is pondered efficient when it is impossible to enhance an individual's well-being without making at least one individual worse off.

Pareto struggled to prove that a perfectly competitive economy could achieve an optimal level of economic justice, by allocating resources in such a manner that they could provide positive changes without impairing someone else – fundamentally, in order to be efficient, nobody should lose in spite of someone's gains.[231]

In this sense, a Pareto optimum simply indicates that a certain change should be socially acceptable only if the welfare of each person is thereby either ameliorated or left as the *status quo ante*. However, to establish economic policies changes of this sort is in a practical effect next to impossible since almost unvaryingly somebody has to lose in order to someone gain.[232]

If inequality is the central issue, Pareto-efficient changes could or could not be an improvement[233], thus reliant on the first positions of those made better off.[234] In practice, there

[230] Wilfried Fritz Pareto (15 July 1848 – 19 August 1923) was an Italian engineer, sociologist, economist, political scientist, and philosopher that provided numerous contributions to economics, especially in the analysis of income distribution and of individuals' choices.
[231] In this sense, Pareto evidenced that a market economy would always search to allocate resources in the most productive possible manner or in the most efficient modus, as a form of distribution of resources in such a way it is not possible to make any one individual better off without reducing somebody else's.
[232] Milanovic, Branko (2015), *The haves and the have-nots a brief and idiosyncratic history of global inequality*, Johanneshov: MTM.
[233] This sort of equilibrium qualifies as a Pareto-suboptimal solution because there could be a feasible change, or Pareto improvement, to a condition in which no participant would be worse off and at least one performer would be better off.
[234] McWilliams, Douglas (2016), *The flat white economy: how the digital economy is transforming London and other cities of the future*, London: Duckworth Overlook.

remains a need for a balance, which determines an efficiency parameter, by reducing the asymmetries in line with the equality dimension.[235]

The central problem with Pareto optimality is that it does not take into account the ever-present interchanges of the cost-effective lifecycle, especially once taxes are introduced[236]. It consequently turns out to be crucial to emphasize the importance of shaping regulations on existing international tax regime beforehand any attempt to draw hypothetical conclusions of what is the most efficient cooperative solution scenario.

Considering the aim of a tax system is to collect income, and by assuming that each jurisdiction has a minimum revenue necessity[237], and that direct international fiscal transfers are restricted or impossible, the conclusion is that maximizing worldwide efficiency would always and necessarily revert to the benefit of all countries involved.

But in the reality what actually happens is that each country first chases its personal revenue agenda, and only in a second place preoccupies itself in maximize general worldwide growth. In this sense, before a common growth goal, the tax competition among countries delivers a first-hand unequal system, for this is precisely what jurisdictions pursuit in the first place.

From this perspective, amplifying worldwide capital productivity could be Pareto-optimal nevertheless of distributional trepidations, for the reason that whichever endeavour to counterbalance this allocation disparity could result in deadweight losses[238] that surpasses eventual distributional profits. This tactic successfully destabilizes the international taxation traditional approach to first maximize worldwide growth and then redistribute tax revenue

[235] Ryan-Collins, Josh, Toby Lloyd, Laurie MacFarlane, and John Muellbauer (2017), *Rethinking the economics of land and housing*, London: Zed Books Ltd.
[236] Rodrik, Dani (2016), *Economics rules: the rights and wrongs of the dismal science*, New York: W.W. Norton and Company.
[237] Once assumed that tax laws are intended to raise revenue, it is also reasonable to assume that countries which adopt a tax system have some marginal amount of income that must be upraised; as the obvious consequence the country would not endorse a tax system if not.
[238] As explained in Auerbach, Alan J. and Hines, James Jr. (2002), *Taxation and economic efficiency*, Handbook of Public Economics, in: A. J. Auerbach and M. Feldstein (ed.), Handbook of Public Economics, Edition 1, Volume 3, Chapter 21, Elsevier, pp. 1347-1421 "*tax-induced reductions in economic efficiency are known as deadweight losses or the excess burdens of taxation, the latter signifying the added cost to taxpayers and society of raising revenue through taxes that distort economic decisions*".

purely as a matter of equality or distributive justice, thus creating a perfect environment for the upsurge of tax havens.[239]

4.1.2. Taxation and economic efficiency

In early 20th century, economists Shanz, Haig, and Simons argued that the best way to tax an agent would be through income taxation.[240] Between years 1910-1920, the concept of income was established, translated into the patrimonial difference produced during a certain time, related to the economic profit. Some earlier, idealized economic models suggested that it was optimal not to tax interest income (income from capital),[241] but subsequent research showed that this result was not robust: capital taxation is not only desirable, but necessary.[242]

In his renowned Capital in the Twenty-First Century, Thomas Piketty elucidates that "*taxation is neither good nor bad in itself. Everything depends on how taxes are collected and what they are used for*." In this evaluation, the author explains that the per capita income growth follows the appeal to devote people incomes to deliver an increasing share of that growth to social spending, by assuming that taxes are collected in a transparent and efficient manner and used for purposes that each individual approves as of great priority, such as education, health, culture, clean energy, and sustainable development.[243]

The concept of capital income taxation is therefore intrinsically related to the efficiency and equality aspects: from the point of efficiency, it is not intrusive, because when the income is obtained, the subject has a sense of enrichment, which constitutes the ideal moment for the incidence of tribute.

---

239 Rosenzweig, Adam H. (2010), *Why are There Tax Havens?* William and Mary Law Review, Vol. 52, No. 3, 2010; Washington University in St. Louis Legal Studies Research Paper No. 10-11-03, cit.
240 McCann, Ewen and Holmes, Kevin (2010), *The Classification of Capital and Revenue in Accounting and the Definition of Income in the Market-Place*, Victoria University of Wellington – Centre for Accounting, Governance and Taxation Research Working Paper No. 73, Retrieved from: http://dx.doi.org/10.2139/ssrn.1883966
241 Piketty, Thomas and Saez, Emmanuel (2011), *A Theory of Optimal Capital Taxation*, Working paper, Paris School of Economics and University of California at Berkeley, Retrieved from http://elsa.berkeley.edu/~saez/piketty-saez1_1_11optKtax.pdf
242 Stiglitz, Joseph E. (2013), *The price of inequality: How today's divided society endangers our future*, New York: W.W. Norton and Company.
243 Piketty, Thomas (2014), Capital in the Twenty-First Century, Cambridge Massachusetts: The Belknap Press of Harvard University Press, cit.

In this context, taxation of income is crucial not only for it is a way of entailing all citizens to contribute to the financing of public expenses and projects and to distribute the tax burden as fairly as possible; it is also advantageous for determining arrangements and promoting information as well as democratic transparency.[244]

In addition to the efficiency perspective, there is the equality aspect, related to the contributively capacity of the subject and the resulting net variations. It is possible to confirm that, in fact, the value that should be set for tax incidence is the concept of real profit, that is, the profit that was actually realized, translated into the cost-effective result of a country's economic development.

Even though "*taxes are the price we pay for a civilized society*" as stated in 1927 by Justice Oliver Wendell Holmes, Louis XIV's finance minister, Jean-Baptiste Colbert, memorably pointed out that "*the art of taxation is to pluck the goose as to obtain as many feathers as possible with as little hissing as possible*."[245] In other words, while taxation is indispensable, it must be, atop all, efficient.

In the tax system, tax must correspond to the appropriate balance between the lack of financing of an essential level of public intervention and the efficiency losses resulting from the public intervention itself. In its iconic work The Wealth of Nations[246], the father of economics, Adam Smith, implied that each individual pursuing its own interest would also promote the general good if being guided by the invisible hand of a free market context.

Even though only a century later Adam Smith's theory would be accurately comprehended, a modern version explains that a competitive free-market equilibrium would be Pareto-optimal. For this as many other reasons, Adam Smith's works represent one of the most important contributions in the field[247].

In fact, welfare economics[248] not only confirm scientifically the cogency of Adam Smith's main assumptions, but first demonstrates that government-induced monopolies,

[244] Piketty, Thomas (2014), *Capital in the Twenty-First Century*, Cambridge Massachusetts: The Belknap Press of Harvard University Press, cit.
[245] Translated from the French "*L'art de l'imposition consiste à plumer l'oie pour obtenir le plus possible de plumes avec le moins possible de cris*."
[246] Smith, Adam (1981), *The wealth of nations*, London: Dent.
[247] Ingrao, Bruna, and Israel, Giorgio (1990), *The Invisible hand: economic equilibrium in the history of science*, Cambridge, Mass: MIT.
[248] In welfare economics, welfare signifies the general well-being or common good of the people.

subsidies, and other forms of non-competitive performances may lead to inefficiency and leftovers[249].

4.1.3. Offshores and tax efficiency

Transposing these understandings to our study, in the tax sphere, capital-exporting countries will always seek residence taxation, which is the taxing principle in force, while for capital-importing countries there is no doubt that taxation at source is more advantageous.

Considering that the residence principle for capital income taxation (under which taxation by the country in which the investor resides) is preferable to the source principle (taxation by the country in which the income arises),[250] there is a conflict between the two essential taxation principles: source and residence. As will be seen below, the core of the tax havens problem focuses on the (de)location of the tax issue, responsible for the inefficiency of tax systems.

According to Adam H. Rosenzweig[251], "the phenomena of tax competition and tax havens can be attributed, at least in part, to two distinct, but related, implicit sources: the capital neutrality and punishment paradoxes. The capital neutrality paradox provides that as barriers to capital crossing borders are reduced, the ability to attract capital through tax competition increases, thereby creating or exacerbating divergent interests over the taxation of mobile capital between marginally capital-attractive jurisdictions and marginally capital-unattractive jurisdictions. The punishment paradox, meanwhile, provides that punishing countries which engage in tax competition as a result of the incentives of the capital neutrality paradox, will necessarily be counterproductive."[252]

Under the convergence model, as the amount of capital in a specific jurisdiction expanses, capital returns shrink when paralleled to those in the States with an inferior capital

---

[249] Hahn, F. H., and Arrow, Kenneth J. (1971), *Readings in the theory of growth: a selection of papers from the Review of Economic Studies*, London: MacMillan.
[250] Keen, Michael, and David Wildasin (2004), *Pareto-Efficient International Taxation*, American Economic Review, 94(1), pp. 259-275.
[251] Rosenzweig, Adam H. (2010), *Why are There Tax Havens?* William and Mary Law Review, Vol. 52, No. 3, 2010; Washington University in St. Louis Legal Studies Research Paper No. 10-11-03, cit.
[252] On this matter, the 'punishment paradox' in correlation with the 'capital neutrality paradox' could provide a considerable diversification in how international tax regimes theorizes and counteracts tax havens issue.

amount, whereas jurisdictions with inferior revenues will partake superior capital claims, running, as a result, to greater earnings.

As a consequence, poorer countries will pay a superior profit on capital when compared to wealthier ones, which means, in a simple state, that capital ought mostly to stream after high investment countries to short capital countries. In this case, all countries should be encouraged to approve a double taxation relief procedure.[253] Rich jurisdictions would be wealthiest while their national income would accomplish upper earnings abroad, whilst lowlier countries would be more affluent pursuing an increase of capital flowing amount precisely to them.[254]

In such events, a poorer country would be unable to convene the minimum in effect revenue persecuted of its internal tax base collection, for it didn't had the possibility in the first place to attract capital through economic returns alone and to start with is a capital-poor jurisdiction, trapped, in this sole view, in a deprived poverty-cycle of access to capital. As mentioned above, quite because the role of the tax law is to raise revenue for public goods or redistribution, once the international tax is taken into account, this whole examination turns out as inefficient itself.[255]

Therefore, the matter does not concentrates anymore in equality, growth, or distributional concerns, but first on the spurs shaped by tax regulations on jurisdictions performances, specifically in what degree poorer countries have an encouragement to fairly participate in tax competition for they are powerless to foster enough income to encounter their minimum revenue necessities.[256]

---

[253] Trebilcock, M. J. (1995), *What makes poor countries poor?: the role of institutional capital in economic development*, Toronto: Canadian Law and Economics Association c/o Faculty of Law, University of Toronto; and Buscaglia, Edgardo; William E. Ratliff, and Robert Cooter (1997), *The law and economics of development*, Greenwich, Conn: JAI Press.

[254] This predicament, however, does not consider empirical reality that capital, in true, does not flow to poorer countries as foretold under the neoclassical model.

[255] In the capital neutrality paradox, it is exactly the international tax laws panorama that favours wealthier jurisdictions on augmenting cross-border mobility that generates or intensifies necessary circumstances for tax havens to ascend and persevere. In this view, the paradox surfaces from empirical reality that capital flows disproportionately away from poorer to wealthier nations. As a result, a cross border free capital flow world scenario outcome is poorer States with insufficient national tax bases, that have no or little choice but to engage in tax competition in order to achieve their tax income agenda.

[256] The capital neutrality paradox arises especially considering that slighter countries can use their tax laws to attract capital by exploiting those very same policies adopted by wealthier countries to mitigate double taxation in the first place.

This procedure probably has not been identified in the past for several tax havens or offshore jurisdictions offers an absence of income tax rates or near this tax wage, in the form of low or zero rates, providing an assumption of little raise of income through tax competition.

In spite of the fact that tax competition delivers to a number of countries the possibility to gather the desirable amount of revenue, this does not imply that small or poor country must convert as a tax haven, or that even this was the country's aspiration in the first place.

Only the most slightly appealing areas would be capable to lucratively apply tax haven stratagems, which, of course, must be desired in the first place. Keeping in mind that tax havens employ a capital neutrality paradox competitive performance, it is possible to speculate that current international tax regime produces motivations to countries to undertake tax haven behaviours.[257]

In this sense, many authors relate income inequality, which has increased considerably in the last decades, to the inefficiency of the domestic tax systems. Evidence points out that the majority of the financial assets that are seized in tax havens are from residents of the wealthy nations, also known as High-Net-Worth Individuals (HNWI).

The fact that even when related to poor countries and the rest of the world, the rich jurisdictions net assets remains positive, demonstrates that in practical terms, the inequality is even deeper than statistics estimations, for a large part of financial revenues are not being taken into account.[258]

4.1.4. Why list jurisdictions and is it effective?

As expounded above, a commonly applied form of tax haven or non-cooperative jurisdiction punishment, by a number of countries and organisations such as the OECD and the

[257] For example, Ireland is considered a more interesting *entrée* to Europe than non-EU members such as Belize, while Switzerland is considered much more attractive as a source of bank secrecy than the jurisdiction of Vanuatu.
[258] Piketty, Thomas (2014), *Capital in the Twenty-First Century*, Cambridge Massachusetts: The Belknap Press of Harvard University Press, cit.

G20, is the adoption of the aforementioned procedure of enrolling them under black, grey or white lists.[259]

Since the history of blacklisting money laundering and tax havens demonstrates that it is a very delicate topic for international relations, in order to compatibilize this procedure with the global diplomatic agenda, the OECD has recently evolved to a three categorized list to label jurisdictions[260].

On another point of view, to punish a taxpayer for investing in a tax haven as a means of encouraging cooperation, to some could actually aggravate the whole situation by growing the after-tax cost of investments made in the haven country and intensifying tax competition assignation.[261]

Regarding the FATF money-laundering enlistment, jurisdictions compliance with the international standards of the blacklisting policy concerning AML / CFT increased significantly in the international policymaking in the last twenty years. Blacklisting embodies the cornerstone of worldwide parameters, and an exertion to diminish the risk that some jurisdictions or territories may turn into havens for illegal financial undertakings.

Studies have been made[262] considering the inclusion / exclusion from the FATF 'blacklist' as an effective strategy to impact countries' cross-border capital flows, and the conclusion pointed out was that *"in general, the stigma effect does not exist" for "the use of a soft law practice as the blacklisting is likely to be a weak policy solution for a structural*

[259] 1998 OECD Report, cit.

[260] Unger, Brigitte; Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, cit.

[261] Some authors argue that in this regard, if punishing specific tax haven was efficacious in convincing that this type of arrangement is ludicrous to harmful tax competition, the risk of suffering such chastisement should make it more expensive for all countries to engage in such phenomena, and dissuade other countries from becoming new candidates into the tax haven trade. As in Palan, Ronen (2002), *Tax havens and the commercialization of state sovereignty*, International Organisation, 56(1), pp. 151-176, the actuality is that at present more jurisdictions undertake tax havens strategies than in 1962.

[262] This specific study analysed cross-border capital flows in order to verify the existence and direction of the effect of the soft regulation promoted by international organisations against banking secrecy which characterizes the so-called tax and financial heavens. By examining the relationship between international capital movements and the FATF listing/delisting procedures in 126 countries from 1996 to 2014, the study approached within empirical evidence whether international banking activities responded to the 'name and shame' stratagem, which has been introduced to combat money laundering and terrorism financing.

problem that has deep roots in the incentive structures of both offshore and onshore countries"[263].

Corroborating this enlightenment, it is important to note that sometimes, not all flaws are unerringly identified in the FATF listing procedure, because the adopted criteria is very specific and do not consider the general identification of gaps that are verified in countries assessments, for the FATF evaluations look only at the effectiveness of a country AML / CFT framework, as well as its technical compliance with its Recommendations.

For instance, just three months before the Panama Papers leaks, at the February 2016 Plenary meeting, the FATF concluded that Panama had then met the commitments from its June 2014 action plan by ensuring the required legal and regulatory framework was in place[264]. Even though the FATF did not conclude that Panama was fully compliant with the wide range of the FATF standards, the intergovernmental body deliberated that Panama had, at that time, taken sufficient action to address strategic weaknesses in its legal, operational, and regulatory framework to fight money laundering and terrorist financing, thus deciding the country should be removed from its 'grey list'.

Despite these remarks, in a solution-based endeavour, it is unmistakable that the OECD and other organisations role is in a first attempt, to provide ground to standardize tax regimes of countries and only then pursue punishment as a second option.

The list of non-cooperative jurisdictions for tax purposes was envisioned in the communication on an external strategy in which the European Commission[265] outlines that listing a jurisdiction should always be considered as a last resort option and should be reserved specially for those who refuse to engage on tax good governance matters or fail to constructively acknowledge EU concerns with their tax systems.

---

[263] Balakina, Olga; D'Andrea, Angelo and Masciandaro, Donato (2016), *Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?*, Baffi Carefin Centre, Research Paper No. 2016-20, cit.

[264] Another point that was observed in this tricky succession of events was that the documents leaked at the time of the Panama Papers scandal tract back many years before Panama fulfilled the most imperative FATF standards, as a consequence of the FATF inquiry. Thus, it would logically take time and extra effort to entirely apply such measures, and Panama is not different from other countries in the need of demonstrating that the implemented measures convey accurate outcomes.

[265] European Commission, Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation, Brussels, 28.1.2016, COM (2016) 24 final, Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0024andfrom=EN

As a matter of facts, the punishment enlistment is not immediately applied, but only as a second exertion in case a jurisdiction does not demonstrate good faith and effective evidences in adopting fair tax competitive measures. As previously seen, the OECD and the EU deliver a periodically wide-ranging peer-review on jurisdictions commitments and achievements, intermittently moving countries according to their true enactments under a list entitlement to another.

Yet, once a jurisdiction is drawn up in an EU list of non-cooperative jurisdictions, all Member States must comply with application of counter-measures, that serve not only to protect the Member States' tax bases, but also to stimulate the listed jurisdictions to comply with regulatory standards into their respectively tax regimes.

As already clarified by the FATF, *"the current list of high-risk and non-cooperative countries reflects the countries with the most serious deficiencies that pose a real threat to the integrity of the international financial system."*

Whilst the financial system evolves, so does the techniques and methods that are used to launder illegal profits or transfer resources to fund terrorism, which develop increasingly to subsist as more intricated and complex. The up-to-date procedure of monitoring, peer-reviewing and listing provide a more efficient apparatus to protect the financial system environment, for the fact that countries that fail to accurately implement the FATF Recommendations generate instability.

In this panorama, important AML / CFT measures are essential to deliver pressing outcomes, specifically because through the listing procedure, the FATF refer jurisdictions who fail to achieve minimum standards and with the most alarming breaches to accomplish technical compliance.

In the decade comprised between years 2007 and 2016, the FATF has evaluated more than 80 potentially high-risk and uncooperative jurisdictions, publicly identifying 59 of them. Among those, 48 countries have committed to address AML / CFT domestic weaknesses, thus safeguarding the integrity of the international financial system, "*which is only as strong as the country with the weakest measures*"[266].

[266] FATF (2016), *Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion, Public hearing anti-money laundering and tax evasion: who sets the rules and how?* Remarks by FATF Executive Secretary, David Lewis, FATF, Paris, Retrieved from http://www.europarl.europa.eu/cmsdata/112269/Replies_FATF_en.pdf

Truth is offshores represent an externality in terms of market failure inefficiency consequences and to eradicate them is clearly impossible. If not absolutely effective, as suggested above, the listing procedure it at least represents an ancillary device in an attempt to promote a more efficient international tax regime for all countries involved, especially considering the hierarchy of enlistment currently adopted.

What the participants involved are presently already trying to build is a world in which tax havens couldn't be reached as an easily accessible resource – an extremely complex and undeniably not easy task, and any approach that assists this endeavour must be welcomed.

CHAPTER 2 – PREVENTING MONEY LAUNDERING AND GLOBAL TERRORISM FINANCING THROUGH OFFSHORES JURISDICTIONS UNDER THE PRISM OF FISCAL EFFICIENCY

The majority of money laundering and global terrorism financing arrangements partake the fact that criminal organisations exploit opportunities made available by financial havens and offshore centres to launder criminal proceeds, for they create obstacles to investigate, uncover, halt and punish this sort of activities by hiding the felonious trail. It is so for financial havens abide very strict financial secrecy, successfully safeguarding external financiers from inquests and prosecutions from their domestic jurisdiction.

The problem of ML and TF is not only the criminal activities themselves, but all apparatuses that sustain delivering opportunities for them to subsist and continue to produce funds for their harmful actions.

Legislative variances amongst countries and its consequent inefficiency of the domestic tax systems empowers lawbreakers to benefit of the stemming asymmetries, due to the fact that criminals search to exploit loopholes offered in any given jurisdiction, particularly OFCs[267].

[267] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.

4.2.1. The use of OFCs for criminal purposes – loopholes to ML and TF

In 1998, a Report on Financial Havens, Bank Secrecy, and Money Laundering was released as a result from the works carried out by the UN Office for Drug Control and Crime Prevention in the global programme against money laundering. In that opportunity, the study established that "*the common denominator in money-laundering and a variety of financial crimes is the enabling machinery that has been created in the financial havens and offshore centres*".[268]

Two decades later, although considerable and ground-breaking efforts have been made, the geneses of the problem relating money laundering, terrorist financing and offshores jurisdictions remains: financial havens endure to offer an extensive assortment of conveniences to foreign stakeholders to endure concealing the origin of their assets, may them be from illegal sources or not.

In order to seek solutions for the problem, as stated in the Conference of the Parties to the UN Convention against Transnational Organized Crime, to accomplish and implement AML / CFT measures and strength forfeiture regimes in line with international standards, one must pursuit the objective to "*take the profit out of crime*"[269].

4.2.1.1. Bank Secrecy and financial havens – a confidentiality problem

Considered as one of the strategic pillars of tax havens in the financial systems[270], bank secrecy constitutes one of the main loopholes that give rise to money laundering activities. Since difficulties for law enforcement representatives are magnified by the fact that, in most cases, modern economic crime unescapably requires money laundering, the problem is closely interrelated to confidentiality laws provided by bank secrecy.

---

[268] United Nations (1998), *Report on Financial Havens, Bank Secrecy, and Money Laundering*, United Nations Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, cit.

[269] United Nations, Conference of the Parties to the United Nations, Convention against Transnational Organized Crime, Fourth Session, Vienna, 8-17 October 2008, CTOC/COP/2008/CRP.14, Retrieved from https://www.unodc.org/documents/treaties/COP2008/crp14.pdf

[270] Radu, Marius (2016), *Bank Secrecy – Pillar for Performance of Tax Havens Social Economic Debates*, Volume 5, Issue 2, Retrieved from: https://ssrn.com/abstract=2890963

As it is well known, offshore banking feeds manifold prospects for money laundering, terrorist financing and assorted other criminal activities to take place, for the reason of inadequate safeguard or due diligence prevention. In this panorama, national and international institutions frequently press OFCs jurisdictions to enforce the AML / CFT compliance albeit its bank secrecy domestic regulations[271].

Notwithstanding bank secrecy and financial havens represent different concerns, both share an accurate resolution and a profitable validation: they provide shelter to criminals with the commitment of 'doing business at any cost'. By persisting to deliver confidentiality for money laundering and various other unlawful actions through bank secrecy and offshore banking, OFCs operate as criminality enticements.

The development of illegal activities, particularly ML and TF, thoroughly engenders confidentiality requirements, considering that economic and political motivations can encourage national politicians and international banks to request and to allocate banking secrecy.[272]

As enlightened above[273], amidst the most prominent efforts to undermine the confidentiality problem, the FATF has drawn up among its international forty-standard recommendations, as a precautionary measure, the 9th Recommendation which states that "*countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations*".

Following, Recommendation 10 specifies the necessity of customer due diligence (CDD) measures, stipulating that "*financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names*". This Recommendation also indicates the necessity of a 5-year obligatory record-keeping, in which "*Financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests*

[271] Picard, Pierre M. and Pieretti, Patrice, Bank Secrecy (2009), *Illicit Money and Offshore Financial Centers*, Paolo Baffi Centre, Research Paper No. 2009-45, Retrieved from: http://dx.doi.org/10.2139/ssrn.1411584
[272] Balakina, Olga; D'Andrea, Angelo and Masciandaro, Donato (2016), *Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?*, Baffi Carefin Centre, Research Paper No. 2016-20, cit.
[273] See topic 2.3.1. Financial Action Task Force outcomes.

from the competent authorities", as to produce, if necessary, the possible reconstruction of the individual transactions trail for criminal prosecution.[274]

For decades, factual and formal banking secrecy laws have hindered the gather of information appeals from both national and international competent authorities such as tax administrations and financial regulators.

Until 2005, most of the settled DTAs did not explicitly comprised provisions to prevail upon banking secrecy laws when answering information requests by international treaty partners. In this sense, the limit to invoke individual bank information was the foreseeable relevance, that aimed to avoid in a first plan, eventual fishing expeditions.[275]

Following the works carried out by the G20 Leaders in April 2009 to put an end to the era of bank secrecy and the Global Forum reports on exchange of information, in October 2011 the OECD published the report "The Era of Bank Secrecy is Over"[276], in order to embolden countries to participate on a multiparty milieu of exchange of information built on a bilateral treaty system. At the Cannes G20 Summit, all G20 nations committed to sign the OECDs Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC)[277], with the objective to enhance the efficiency of the automatic exchange of information systems.

As it has been made clear, the legal barrier to accessing banking data for information exchange resolutions has been overawed with the advent of automatic information exchange standards, especially with the Automatic Exchange of Information (AEoI) following the OECD's Common Reporting Standard (CRS) establishment.[278] The Multilateral Convention drastically addressed the tax evasion problem by putting an end to bank secrecy, restraining financial confidentiality and averting swindlers to conceal undeclared funds in bank accounts.

---

[274] FATF Recommendations, cit.

[275] Dourado, Ana Paula (2017), *Governação Fiscal Global*, Coimbra: Almedina, cit., pp. 303-305.

[276] OECD (2011), *The Era of Bank Secrecy is Over*, Retrieved from: http://www.oecd.org/tax/exchange-of-tax-information/48996146.pdf

[277] OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Retrieved from https://dx.doi.org/10.1787/97892641156606-en

[278] OECD (2012), *Automatic Exchange of Tax Information, What It Is, How It Works, Benefits, What Remains to Be Done*, Retrieved from: https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf

At the EU level, the issue of banking secrecy was present already in the Directive 77/799/EU[279], which, in Article 8, provided the possibility for a Member State not to exchange information if it was protected by bank secrecy[280]. This problem was later addressed in Directive 2011/16/EU[281], adopted on the basis of Articles 113 and 115 of the TFEU, which specifies that in no case the exchange of information upon request shall be declined by a Member State solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.[282]

Under these developments, the limit that cannot be invoked by States in the exchange of information is precisely the bank secrecy, in accordance with Article 26(5) of the OECD Model Convention, which states that "In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."[283]

In spite of its centennial history of bank secrecy, recently it has been made public that the era of Bank Secrecy had come to an end in Switzerland as well, for the country started partaking account information. Following the deposit of the instrument of ratification and entry

---

[279] Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, OJ L 336, 27.12.1977, p. 15–20, No longer in force, Date of end of validity: 01/01/2013; Repealed by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, Retrieved from http://data.europa.eu/eli/dir/1977/799/oj, Hereinafter: 1977 Mutual Assistance Directive

[280] Article 8 of the 1977 Mutual Assistance Directive stated that "*Limits to exchange of information 1. This Directive shall impose no obligation to have enquiries carried out or to provide information if the Member State, which should furnish the information, would be prevented by its laws or administrative practices from carrying out these enquiries or from collecting or using this information for its own purposes. 2. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy. 3. The competent authority of a Member State may refuse to provide information where the State concerned is unable, for practical or legal reasons, to provide similar information*."

[281] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1–12, In force, Retrieved from http://data.europa.eu/eli/dir/2011/16/oj, Hereinafter: 2011 Administrative Cooperation Directive.

[282] Article 18(2) of the 2011 Administrative Cooperation Directive.

[283] Article 26(5) of the OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Retrieved from https://doi.org/10.1787/mtc_cond-2017-en

into force in 2017[284] of the MAC, Switzerland came in line with the OECD and the G20 automatic international exchange of information standards on taxation.

As specified by the agreement, Member States are entitled to annually benefit without the need of formal requisition from names, addresses, tax identification details and dates of birth of individuals with Swiss bank accounts as well as other data regarding their financial situation[285].

Though bearing this in mind, it is imperative to note that poor countries will not be part of this measure considering they lack the resources to fulfil the conditions for automatic information exchange, for the simple fact that they do not possess the ability to gather and share information on financial assets of Swiss citizens that live in their countries, as well as guarantee that the data to be disclosed by Switzerland will be used only for tax purposes and persist confidential. In other words, Switzerland will exchange information with wealthy countries, but also endure to offer citizens of poorer countries the chance to evade due taxation.[286]

4.2.1.2. Offshore companies as complex business designs

Apart from the bank secrecy problem, offshore structures represent another stake on financial havens most prominent undertakings, by providing the necessary secrecy to individuals and companies to perform their harmful agenda through concealment of the true ownership information behind layers of complex business designs.

In a large encompassment, there can be pointed out four main types of offshore companies that are used for criminal purposes, which are carried mainly through (i) international business companies or corporations (IBC): most oftenly used in ML, tax fraud, corruption and other illicit activities, they resemble offshore companies in its most untainted formula in its particular regulation applicable, thus differing from local corporations; (ii) non-resident companies: these sort of companies were shortly introduced after World War II, with

[284] Status of the Jurisdictions Participating in The Convention On Mutual Administrative Assistance In Tax Matters Retrieved from https://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf

[285] Radu, Marius (2016), *Bank Secrecy – Pillar for Performance of Tax Havens Social Economic Debates*, Volume 5, Issue 2, cit.

[286] Tax Justice Network (2018), *Narrative Report on Switzerland*, Retrieved from http://www.financialsecrecyindex.com/PDF/Switzerland.pdf

the upsurge of multinationals and first international tax planning stratagems, nonetheless, as offshore companies that assumed this configuration were only exempted from taxes when companies were managed abroad from the jurisdiction of incorporation, they became less used; (iii) exempt companies: began as substitute for non-resident companies, and have the peculiarity that they may be managed from abroad, and in spite of the fact that they are subject to tax obligations in the country of incorporation, they are at the same time exempted below specific circumstances; and (iv) zero tax companies: these are the last category of offshore companies defined in the literature. Specific countries receive constant international pressure to eradicate their harmful tax practices, which by distinguishing between onshore and offshore companies, led these jurisdictions to introduce a zero-percentage rate for all corporations.[287]

In this context, Multinational Companies or Enterprises (MNEs / MNCs) exploit tax haven concealment in marginally dissimilar behaviours then tax evaders, money launderers and other criminal individuals. By involving complex business enterprises compound by different layers of offshore entities and accounts to camouflage or modify, MNCs pursue tax avoidance in order to reduce their corporate tax handbills to zero or even eliciting a tax refund, while they relish from vast returns.[288]

One of the most common business arrangements through which MNCs oftenly diversifies their investments geographically are certain types of Special Purpose Entities (SPEs) or Special Purpose Vehicle (SPVs), generally described as legal entities that have little or no employment, or operations, or physical presence in the jurisdiction in which they are established by their parent companies which are archetypally situated in other jurisdictions or economies. Amidst the most common examples are financing subsidiaries, conduits, holding companies, shell companies, shelf companies, letter-box or brass-plate companies[289] that are habitually used as manoeuvres to foster wealth or to hold funds and liabilities and most commonly do not assume noteworthy production.

Within the SPEs exemplars are the so-called shell companies, which tend to be conduits or holding companies and are generally described as a company that is formally

---

[287] Unger, Brigitte; Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, cit.
[288] Radu, Marius (2016), *Bank Secrecy – Pillar for Performance of Tax Havens Social Economic Debates*, Volume 5, Issue 2, cit.
[289] A letterbox or brass-plate company is a legally constituted company whose only tangible existence in its jurisdiction of incorporation is the letter box or the nameplate (commonly made of brass, thus the name) attached to the wall outside its registered office.

registered, incorporated, or in alternative way legally organised in an economy, that, however does not bear any operations in that jurisdiction other than in a pass-through capacity, thus their 'shell' characteristic.[290]

Conduit enterprises, on the other hand, are structures that obtain or borrows funds, frequently from unaffiliated companies, and forward them to its direct investor or another affiliated corporation. Some conduits companies may possess a sizeable physical presence as an office building, equipment, employees, or may bear (little) or no physical presence and subsist only as shell companies. They are most commonly used as a vehicle to avoid paying tax on income in two different jurisdictions – where the parent firm is located and also in the jurisdiction where the conduit company is registered.

By the same token, a holding company is typically established to hold participation interests in other corporations on behalf of its owner. Although a few holding companies sometimes possess a significant physical presence evidenced by office buildings, equipment, and employees, similarly to the conduit companies, in most times they have little or no physical presence and may endure only as shell companies, for they do not require to be trading or a physical presence.[291]

This sort of structures is frequently used by individuals and other business entities to demeanour legitimate transactions, among them internal and cross-border exchanges, resettlements of revenues, or to facilitate corporate reorganisations, such as mergers and acquisitions.

Even though they are designed after initially legitimate purposes, they are frequently castoff for illicit agenda such as tax evasion, money laundering and terrorist financing, for the reason that they commonly possess limited liability, no suggestive resources or ongoing corporate undertakings and, in most times, even have no physical presence other than a mailing address, do not have employees, and do not produce significant economic value.

---

[290] OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment*, Fourth Edition, OECD Publishing, cit., p. 241.

[291] European Parliament (2017), *The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Authors: Blomeyer and Sanz *et al*, Brussels: European Union, PE 572.717, cit., p-35.

4.2.1.3. OFCs and their role in the money-laundering cycle

In contemporary times, varied and progressively sophisticated money laundering techniques have been used to camouflage illicit assets into legitimate means, being, one of them, by exploring loopholes provided by OFCs.

As explained above[292], the money laundering cycle is constituted by three main phases, which are placement, layering and integration.

While the placement stage comprises the introduction of illicit funds in lawful accounts through the financial system, at the layering phase the launderer aims to detach the illicit characteristic of the profits of crime from its source, which is for this carried out by multiple complex financial transactions that, in their regularity, size and intricacy look like perfectly legitimate. For this process, the launderer can choose for instance any structure that provides adequate financial or business arrangement – which is impeccably done through an OFC configuration.

At the layering point, proceeds can transit through several bank accounts at countless locations where these complex transactions can be completed, as long as deprived of leaving any trail of their geneses or final end.

Shell and front companies can also be of extensive use in the placement and layering phases. For launderers to succeed is crucial for them to hide and remain undetectable behind a 'corporate veil' and a suitable form to provide that it's through the conglomerate of transactions after transactions of multiple accounts, in order to prevent authorities from tracing back to the font.[293] Precisely in this aspect, the FATF Recommendations closes the gaps if fittingly embraced[294].

Shell companies in OFCs with fragile AML / CFT regulations are of common use at the placement stage to collect money in species and afterwards directing it to other jurisdictions or through the buy of real state consumptions on integration point.

[292] For further information, see topic 2.1.1.3. Stages and techniques of money laundering.
[293] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit.
[294] FATF Recommendations, cit.

From layering to integration, distributive transactions between primary offender and syndicated money launderers can also be carried out through offshore structures. As previously seen, shell companies allow vast sums of income to be expatriated through slight allocations, as money is shifted to bank accounts of domestic companies from different jurisdictions, mainly comprising OFCs.

Loans or payments – imports or exports can be easily transferred since very little ownership information is available, and it's quite problematic to accurately pinpoint the beneficiary. In this case, third parties, nominees and straw persons are particularly used to disguise the true identity ownership.[295]

For this specific breach, the FATF provides Recommendations No. 24 and 25 in which are established standards to ensure transparency and the authentic beneficial ownership of legal persons and arrangements proposals. This pledge is carried out by uttering that "*Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing*" and also "*should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities*"[296].

From this perspective, integration phase may be achieved through financial and non-financial corporations, trade-based money laundering and in most times, predominantly through OFCs, which have abundant financial activities.

Considering that corporate entities may provide bearer shares and engage nominee shareholders and directors to masquerade proprietorship and management, for such outcomes, the misuse of SPEs depends mainly in the anonymity offered and the regulation framework they are subject.

In any case, it is exactly the blend of operative, unrecognizability and the little or even absence of formal supervision that let corporate vehicles in OFCs more vulnerable to misapplication. Techniques expended to transfer money to OFCs may adjust to the laundering landscape, however, the utmost usual conduits are carried out largely through cash and funds

[295] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit.
[296] FATF Recommendations, cit., No. 24 and 25.

transfers, misinvoicing of goods and services and straight payments to offshore units or bank accounts.

In the integration stage, by captive financial institutions and money lenders, professional gatekeepers can manoeuvre a brass-plate corporation which can be established either onshore or in an OFC. Covered as legal and economic entities in the trade records, these structures are recurrently topic of assessments and inspections. Captive financial small and medium sized institutions can also disguise a substantial quota of their profits.

Finally, it is important to underline the noteworthy role of professional gatekeepers, that provide 'legal services' via letterbox or brass-plate companies, and may, as to avoid revealing ML activity, not declare income resulted from providing expertise for ML accomplishments.

Amongst most recurrently gatekeepers are lawyers, notaries, property developers, accountants and other independent legal professionals that labour as facilitators to empower criminal groups to successfully achieve their goals. It is so because the services delivered by these professionals ensure a sophisticated machinery and represents a crucial factor in certain ML strategies, such as investment in real estate and the setting up of offshore companies, trusts and foundations, all of which entail qualified professionals' expertise and knowledge.[297]

In fact, professional gatekeepers' roles constitute one of the main columns on AML agenda and for this reason they are specifically addressed under the FATF Recommendations No. 22 and 23, as they are considered Designated Non-Financial Businesses and Professions (DNFBPs), that must comply in order to countereffect ML / TF behaviours[298].

4.2.1.4. The tangled relation between money laundering and tax evasion

With the previous identification of new money laundering techniques, considering that tax havens attract mutually illegal and tax evading income, it is crucial to scrutinize the link between both offences. The purpose of money-laundering practices advances significant concerns regarding a fiscal enforcement environment.

---

[297] European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, 2018 Edition, Luxembourg: Publications Office of the European Union, cit.
[298] FATF Recommendations, cit.

While developing their activities, launderers seek to escape the investigations of their domestic authorities (specially tax representatives), at least, until the revenues are diligently 'washed'.

Though regarding the operation process, tax evasion and money laundering are basically dissimilar, there are numerous occasions at which tax evasion and money laundering partake techniques and can be of joint support.

In a broader viewpoint, tax evasion implicates taking legally gotten revenues and hiding its very existence, for the purpose of disguising its nature and making it seem to be characterized into a non-taxable category; or, in other words, it turns legal proceeds into illegal. On another perspective, money laundering does quite the reverse, by taking profits of the crime, hence, unlawfully earned, and giving it the appearance of being legitimate.[299]

Considering that financial havens are jurisdictions that attract both criminal assets and proceeds from tax evasion, some countries understand tax evasion as fraud, and consequently outline tax evaded income as part of money laundering schemes[300].

In the USA, for instance, ML is considered a sort of tax evasion, but not every tax evasion behaviour is sorted out as ML. According to the Internal Revenue Service (IRS)[301], ML is only tax evasion in development if the fundamental demeanour misapplicates income tax laws, specially the aforementioned US Bank Secrecy Act[302].

In this scenario, the FATF, as an international standard-setter, granted a prodigious initiative by including tax crimes (related to direct taxes and indirect taxes) amongst precursor ML predicate offences, as a form of enhancing transparency and making harder for criminals and terrorists to disguise their identities and conceal criminal profits behind legal persons and entities.[303]

---

299 United Nations (1998), *Report on Financial Havens, Bank Secrecy, and Money Laundering*, United Nations Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, Retrieved from https://www.amnet.co.il/joomla/attachments/UN-FINANCIAL%20HAVENS%20laundering.pdf, cit.

300 Unger, Brigitte; Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, cit.

301 The IRS is the revenue service of the United States Federal Government. For further information on the IRS, see https://www.irs.gov/

302 See topic Bank Secrecy Act at 2.1.1.1. Historical and legislative background.

303 Savona, Ernesto U. and Riccardi, Michele et al (2017), *Assessing the risk of money laundering in Europe*, Final Report of Project IARM, Milano: Transcrime – Università Cattolica del Sacro Cuore, cit.

This means that, in spite of the fact that the FATF does not ascertain global standards for tax crimes or other misconducts, executing the intergovernmental body standards enhances measures to prevent tax evasion, as the relocation of proceeds through offshores can be reduced by AML / CFT mechanisms.[304]

From this perspective, the FATF AML / CFT standards aim to safeguard the financial system from misuse as a whole. In this sense, countries exertions in their task to advance AML / CFT framework enforcement must concentrate on the high-level objective in which "*financial systems and the broader economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening financial sector integrity and contributing to safety and security*"[305].

Through the integration of the FATF standards, at the EU level, tax crimes are considered as significant ML menaces, and therefore, comprised among ML arrangements that must be counter effected under the 4th and the 5th AML / CFT Directives.

In this sense, the 4th AML Directive encompassed 'tax crimes' under the comprehensive definition of 'criminal activity', that must be punishable by means of the sanctions under a common basis by the Union framework[306], despite of different domestic law definitions of tax offences designations by each Member State.[307]

The foremost remarks regarding tax crimes related to AML / CFT measures in the EU Directives refers to an attempt to establish ways of enhancing transparency through Financial Intelligence Units (FIUs) and beneficial owner information's, being the ladder of particularly importance to improve public inquiry as to prevent the abuse of legal entities and structures comprising tax avoidance[308].

---

[304] FATF (2016), *Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion, Public hearing anti-money laundering and tax evasion: who sets the rules and how?* Remarks by the FATF Executive Secretary, David Lewis, cit.
[305] FATF (2013-2019), *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML / CFT Systems*, updated February 2019, FATF, Paris, France, p. 15, Retrieved from https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html
[306] The punishment common basis is drawn up at Article 3(4)(f) of the 4th AML / CFT Directive, predicating that "*(f) all offences, including tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months*;"
[307] Recital (11) of the 4th AML / CFT Directive.
[308] Recital (35) of the 5th AML / CFT Directive.

In a fiscal efficiency evaluation, a central measure to address the topic of tax evasion, is specifically by certifying that structures of offshore wealth are successfully taxed, primarily through international cooperation and identification of the accurate beneficial ownership[309].

It is so for tax evasion through offshore centres have been found to intensificate the backdown of the global taxation of wealth, considering HNWI are more likely to hide resources offshore for the purposes of seeking refuge in tax havens as to avoid taxpaying responsibilities[310].

CHAPTER 3 – ASSESSING BREACHES AND TRACKING SOLUTIONS

In order to enable fiscal efficiency to be successfully achieved, to address eventual breaches is decisive to ensure operative and effective attempts of solutions are being continuously tracked.

For this purpose, specific mechanisms are essential for the sound functioning of the financial markets and their consequent trustfulness, especially regarding financial information and transparency.

4.3.1. International cooperation: a key to tackle money laundering and the financing of terrorism through offshore jurisdictions

Nevertheless the world has become a globalized network with no barriers for financial streams, in which international collaboration on tax compliance has changed into the adopted standard[311], efforts to frustrate or circumvent new systems for exchanging information

[309] Pellegrini, Valeria; Sanelli Alessandra; and Tosti, Enrico (2016), *What do external statistics tell us about undeclared assets held abroad and tax evasion?,* Banca d'Italia Occasional Papers No. 367.
[310] Alstadsæter, Annette; Johannesen, Niels; and Zucman, Gabriel (2017), *Tax Evasion and Inequality*, NBER working paper No. 23772.
[311] OECD (2018), *Automatic Exchange of Information Implementation Report 2018,* Global Forum on Transparency and Exchange of Information for Tax Purposes, Retrieved from https://www.oecd.org/tax/transparency/AEOI-Implementation-Report-2018.pdf

endure, highlighting the need for unrelenting precaution as to guarantee the continue accomplishment of transparency.[312]

Already in the 1st Resolution established by the 1988 Drugs Convention[313], it was emphasized the importance of international cooperation as well as a timely and efficient exchange of information between countries in order to achieve transparency and enable crime investigation to be carried out in a wholesome worldwide basis.

According to the FATF standards, all countries should proceed on a wide-ranging best practice of transnational cooperation, in both requesting and providing international information situations.

At the time of requesting due cooperation, competent authorities should employ their best efforts to deliver all-embracing accurate and proper legal information, such as (i) urgency aspects, as to enable a timely and efficient execution; (ii) the forecast use of the information demanded; and (iii) feedback to the requested competent authority on the utility and importance of the information to be obtained.

The requested authorities, on the other end, should not decline a request for assistance when: (i) the request involves fiscal matters; (ii) regulations entail financial institutions or professional gatekeepers to uphold privacy or confidentiality (except when the information that is wanted is held under legal privilege or professional secrecy); (iii) when there is an investigation or prosecution being already conducted in the requested country (unless the assistance would obstruct that proceeding); and (iv) the nature or status (civil, administrative, law enforcement) of the requesting counterpart authority is diverse from that of its foreign requested counterpart. However, it is important to underline that "*exchanged information should be used only for the purpose for which the information was sought or provided*".[314]

Under the most recent EU AML / CFT legislative developments, exchange of information and the provision of assistance amid competent authorities of the Members States is positioned as indispensable, and as a result, the FATF Member States should not forbid or allege arbitrary or unjustifiably obstructive requisites on exchange of information and assistance provisions[315].

[312] Alstadsæter, Annette; Johannesen, Niels; and Zucman, Gabriel (2017), *Tax Evasion and Inequality*, NBER working paper No. 23772, cit.
[313] Resolution 1 and Article (9) of the 1988 UN Drugs Convention.
[314] FATF Recommendations, cit.
[315] Recital (48) of the 5th AML / CFT Directive.

4.3.1.1. Exchange of Information mechanisms

Regarding the mechanisms of exchange of information in the tax international environment, as explained above, they are thoroughly entrenched to augment transparency in order to counteract the fiscal inefficiency that perils the financial system, thus consequently vital to fight organized crime and pose viable obstacles to the successful accomplishment of its agenda.

It is so because regulations that avert fruitful interchange of appropriate data with other governments on tax payers that profit from the low or no tax jurisdiction and that are absent in tax transparency provide the necessary gaps for criminal endeavours to take place. [316]

In this scenario, it is imperative to emphasize the work that has been carried out since 2000 by the Global Forum on Transparency and Exchange of Information for Tax Purposes, a multilateral framework on transparency and exchange of information that gathers both the OECD and non-OECD economies. Under the works perpetrated by the Global Forum, two internationally agreed standards on transparency and exchange of information for tax purposes have been developed: The Exchange of Information on Request (EoIR) and the Automatic Exchange of Information (AEoI), in particular with respect to the Common Reporting Standard (CRS).[317]

After its renewal in 2009, the Global Forum has made crucial advances on the implementation of the international high standards on tax transparency. Despite of its effusively embedded and broadly use, to specifically request certain data through the EoIR standard has revealed insufficient in the era of an interconnected world. Technological improvements showed that an Automatic Exchange of Information (AEoI) standard befitted progressively feasible as an apparatus to supplement and strengthen the EoIR to increase tax transparency and further enhance international cooperation to guarantee tax compliance standards are met.[318]

---

[316] European Parliament (2017), *The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Authors: Blomeyer and Sanz et al, Brussels: European Union, PE 572.717, cit., p. 24.

[317] See further information on the Global Forum on Transparency and Exchange of Information for Tax Purposes at http://www.oecd.org/tax/transparency/about-the-global-forum/

[318] OECD (2018), *Automatic Exchange of Information Implementation Report 2018,* Global Forum on Transparency and Exchange of Information for Tax Purposes, cit.

The Common Reporting Standard (CRS), settled in retort to the G20 plea to enhance tax compliance and endorsed by the OECD Council in July 2014, make an appeal to jurisdictions to gather information from their financial establishments and exchange them on an automatic and annual basis with other countries.

As referred previously in the present study[319], the EoIR standard already forecasted that bank secrecy could not be invoked to avoid exchange of information upon request.[320] Being this the new model, since 2014, the international standard adopted is the AEoI, developed in a joint effort by the Global Forum, the OECD and the G20 countries[321].

It is important to note that the new AEoI standard was inspired on the Foreign Account Tax Compliance Act (FATCA), which relates to financial information and implies the transmission of balances and movements of bank accounts, created succeeding the UBS banking scandal events[322]. With the enter into force of the FATCA, in 2010, the USA government created an instrument to prevent US persons from avoiding due payment of their income taxes by the concealment of assets offshore.

Even though FATCA and CRS may likewise possess noteworthy gaps, due diligence and its mechanisms in international tax law field represent a promising enterprise to enhance the AML / CFT framework enactment, which can be better achieved by a uniform exchange of information standard in order to ensure "*that every resident of every country that imposes an income tax be forced to pay his or her tax obligations*". This is fundamental to prevent the destabilisation and solidity of the income tax system, the main formula chosen by States to counteract the deepen of the inequality problem.[323]

The development of the Convention on Mutual Administrative Assistance in Tax Matters (MAC)[324], conjointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010, comprises the most wide-ranging multiparty mechanism in terms of tax

[319] See topic 4.2.1.1. Bank Secrecy and financial havens – a confidentiality problem.
[320] Dourado, Ana Paula (2017), *Governação Fiscal Global*, Coimbra: Almedina, cit., p. 43.
[321] OECD (2018), *Automatic Exchange of Information Implementation Report 2018,* Global Forum on Transparency and Exchange of Information for Tax Purposes, cit.
[322] In the 2009 UBS scandal, the Zurich-based banking institution was fined in US$ 780 million, after the disclosure that several US persons were retaining a considerable amount of financial assets in secret Swiss bank accounts in order to evade taxes in the US.
[323] Avi-Yonah, Reuven S. and Mazzoni, Gianluca (2018), *Due Diligence in International Tax Law*, University of Michigan, Public Law Research Paper No. 608. Retrieved from: http://dx.doi.org/10.2139/ssrn.3198495
[324] OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in tax Matter,* Amended by the 2010 Protocol, OECD Publishing, cit.

cooperation to wrestle tax avoidance and evasion, which, in a globalized financial world, constitutes an uppermost resolution for all nations.

At the Union Level, the 2011 EU Directive on Administrative Cooperation[325] obliged all Member States of the Global Forum as well as Member States of the EU to exchange information according to rules that are identical for all.

Considering that "an increase in the efficiency and effectiveness of tax collection is therefore urgently needed"[326], the Council Directive 2014/107/EU of 9 December 2014 subsequently amended Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, towards an improvement of the administrative cooperation between Member States efficiency under conditions compatible with the proper functioning of the internal market[327].

Precise information on financial accounts is not only crucial to provide and improve interpretation of international transactions, but especially vital as an accurate identification of the agents involved – as a viable means to enable the correct taxation in each State, the precise identification of possible money laundering and tax evasion, the identification of intermediaries, and of beneficial owners of taxable income.[328]

In order to counteract ML and TF behaviours that explore gaps enabled by offshores jurisdictions, exchange of information is crucial to overcome the liabilities of the financial markets and enhance transparency.

To improve due diligence in international tax law represents a must persistent strategy to endure increasing international cooperation in order to facilitate and safeguard a reliable and swift exchange of information between Member States on illegitimate financial flows, which epitomises the very core of how to comprehensively address the problem.[329]

---

[325] 2011 Administrative Cooperation Directive.

[326] Recital (1) of the Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 359, 16.12.2014, p. 1–29, In force, Retrieved from http://data.europa.eu/eli/dir/2014/107/oj, Hereinafter: 2014 AEoI Directive.

[327] Recital (18) of the 2014 AEoI Directive.

[328] Dourado, Ana Paula (2017), *Governação Fiscal Global*, Coimbra: Almedina, cit., p. 301.

[329] United Nations, General Assembly, Resolution 58/6, Strengthening international cooperation in preventing and combating illicit financial flows linked to drug trafficking, from the anti-money-laundering perspective, Retrieved from https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/2015_Resolutions/Resolution_58_6.pdf

4.3.1.2. Financial Intelligence Units role

Bearing in mind that money launderers, terrorist and other law-offenders practice their wrongdoings globally, particularly by the relocation of illegal proceeds from one country to another by exploring weak jurisdictions legislative environments, financial information is imperative to tackle this sort of harmful behaviour in an interconnected world.[330]

In its 40-Recommendations package, the FATF sets out essential measures that nations should apply to battle money laundering and terrorist financing, remarking the crucial importance of facilitating international cooperation for those ends. On this account, national cooperation and coordination is placed in the 2nd Recommendation as "*countries should have national AML / CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies*."

For the accomplishment of such objective, the intergovernmental body exerts the imperative role of effective devices to empower countries to collaborate, coordinate and exchange domestic with each other, concerning the development and enactment of strategies and undertakings for AML and CFT measures.[331]

Amongst its best-practices and guidelines compendium, the FATF formerly established the importance of FIUs, as an essential mechanism to serve as a national centre to obtain and scrutinize: (i) suspicious transaction reports; and (ii) significant information regarding ML, related ground violations and TF.

For those enactments, FIUs should be fit to receive information from reporting entities and be granted access on an appropriate footing to the financial, administrative and law enforcement information necessary to perpetrate its functions accurately[332], between both

[330] Quintel, Teresa (2019), *Follow the Money, If You Can – Possible Solutions for Enhanced FIU Cooperation Under Improved Data Protection Rules*, Forthcoming, ERT 1/2019, University of Luxembourg Law Working Paper No. 001-2019, Retrieved from: https://ssrn.com/abstract=3318299 or http://dx.doi.org/10.2139/ssrn.3318299
[331] FATF Recommendations, cit.
[332] FATF Recommendations, cit., No. 29.

counterparts and non-counterparts[333]. On developing such tasks, FIUs serve as main representatives of countries in trading important financial information worldwide.

On these circumstances, the standard set was of obligatory reporting of suspicious transactions through FIUs, whenever a "financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)".[334]

As underlined by the 7th Recommendation on information security and confidentiality, all information obtained, treated, retained or broadcasted by the FIU must be securely protected, traded and employed in agreement with laws, regulations, policies and pre-established formalities. For this accomplishment, an FIU must observe security and confidentiality on handling sensitive information, as to guarantee that its staff members possess safekeeping authorization levels, as well as carefulness and mindness of their accountabilities and obligations[335].

In the EU legislative framework developments, succeeding the works conveyed by the FATF, the concept of FIUs was first introduced in the Third AML / CFT Directive. In Recital (11), the Directive first established that "Suspicious transactions should be reported to the financial intelligence unit (FIU), which serves as a national centre for receiving, analysing and disseminating to the competent authority's suspicious transaction reports and other information regarding potential money laundering or terrorist financing".

This should not compel Member States to change their existing reporting systems where the briefing is done through a public prosecutor or other law enforcement authorities, as long as the information is forwarded promptly and unfiltered to FIUs, allowing them to conduct their business properly, including international cooperation with other FIUs."[336]

This reference inaugurated FIUs fundamental role in the EU Member States coordination and cooperation, in deference of exchanging of information, with the creation of a high-level distributed mainframe network in the EU context to fight ML and TF, named after

---

[333] On this regard, the FATF encourages countries to permit a prompt and constructive exchange of information directly also with non-counterparts, applying the relevant principles applied to all forms of exchange of information.
[334] FATF Recommendations, cit., No. 20.
[335] FATF Recommendations, cit., No. 7.
[336] Recital (11) of the 3rd AML / CFT Directive.

FIU.net[337], with the objective to facilitate transparency mainly through financial exchange of information.[338]

In an attempt to detail regulations boundaries for the international FIUs processing of personal data information, the 4th AML / CFT Directive safeguards sensible and unhindered access by FIUs to substantial financial data[339], enabling empowerment for units to undertake crucial action, hence improving coordination and cooperation between national authorities.

As to enhance transparency to skirmish the misuse of legal entities, Member States should ensure all necessary information and keep a central catalogue on their beneficial ownership information[340], which is placed as a key element in tracking criminals who could conceal their identity behind a corporate structure. In fact, the Directive proposes that FIUs should afford free exchange of information – spontaneously or upon request – including with third country parties.[341]

Under the 5th AML / CFT Directive, the main purposes of FIUs is "to collect and analyse the information which they receive with the aim of establishing links between suspicious transactions and underlying criminal activity in order to prevent and combat money laundering and terrorist financing, and to disseminate the results of its analysis as well as additional information to the competent authorities where there are grounds to suspect money laundering, associated predicate offences or financing of terrorism."[342]

FIUs roles are enhanced particularly on the virtual currency's matters: in this new configuration environment, exchange of information between countries it's of decisive importance to struggle the risks linked to the anonymity, which allows potential mismanagement for illicit resolutions. In such circumstances, national FIUs must be able to

[337] For more information on the FIU.net, see https://www.europol.europa.eu/about-europol/financial-intelligence-units-fiu-net
[338] Recital (40) of the 3rd AML / CFT Directive.
[339] Article 30(2) of the 4th AML / CFT Directive.
[340] Article 30(6) of the 4th AML / CFT Directive.
[341] Recital (58) of the 4th AML / CFT Directive states that "*Member States should encourage their competent authorities to provide rapidly, constructively and effectively the widest range of cross-border cooperation for the purposes of this Directive, without prejudice to any rules or procedures applicable to judicial cooperation in criminal matters. Member States should in particular ensure that their FIUs exchange information freely, spontaneously or upon request, with third-country financial intelligence units, having regard to Union law and to the principles relating to information exchange developed by the Egmont Group of Financial Intelligence Units.*"
[342] Recital (18) of the 5th AML / CFT Directive.

find and provide accurate information, in order to permit them to associate virtual currency addresses to the identity of its owner.[343]

The 5th AML / CFT Directive also reiterates FIUs imperativeness on identifying the financial operations of cross-border terrorist networks, as well as perceiving their financial sponsors for the purposes of uncovering the enablement of terrorist wrongdoings and terrorist organisations arrangements.

In this context, despite their diverse domestic financial intelligence structure, Member States should ensure international standards are met through a resourceful and synchronized methodology to promote full achievement of international financial investigations. For the successful attainment of such endeavours, countries must provide access to FIUs through facilitated exchange of information in accordance with the appropriate cooperation with law enforcement authorities.

In vital matters such as terrorism hazards, by elucidating the powers of and collaboration between FIUs, information should stream straightforwardly and hastily without unjustifiable postponements, which is therefore essential to further heighten the efficiency of FIUs efforts.[344]

As it may be observed, FIUs constitutes one of the most imperative apparatuses in AML / CFT countermeasures, for they concentrate an embodiment of Member States domestic financial intelligence to provide free-flow information, which corresponds, in a globalized environment, to the central key to struggle spread-out criminal activities, specially money laundering and terrorist financing menaces through offshores structures.

For this purpose, financial intelligence units (FIU), together with policy-makers, law enforcement authorities, supervisors and other allied adept authorities are placed as important mechanisms for countries to guarantee that international and national cooperation are achieved at the policymaking and operational levels, which must be, of course, in agreement to Data Protection and Privacy procedures, specially the General Data Protection Regulation (GDPR).[345]

[343] Recital (9) of the 5th AML / CFT Directive.
[344] Recital (16) of the 5th AML / CFT Directive.
[345] FATF Recommendations, cit., No. 2.

PART V

CONCLUSIONS

In the words of the Deputy Managing Director of the IMF and economy specialist, Min Zhu, "*Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse*."[346]

Throughout this study, the main objective was specifically to demonstrate the potential rapport between tax havens, money laundering, the financing of terrorism and how could possibly the improvement of fiscal efficiency play a key role to solve those at a first view, unalike and dissociated concerns.

Although, at first, they seem to be utterly unrelated subjects, recent financial scandals has demonstrated that, in fact, all aforementioned illegal behaviours are fundamentally related in their essence: money launderers and financiers of terrorism often look out for the same loopholes to perform their undertakings, which require fundamentally secrecy and confidentiality as to be successfully accomplished, which is easily made available by OFCs.

Every day, new structures are built in order to enhance money laundering schemes and terrorist funding activities, with the objective to escape legislation boundaries as well as due scrutiny from authorities. Criminals that endure in these harmful activities, oftenly sear jurisdictions that may provide a weak legislation environment and, in most times, even pursuit to attract these types of investments as a way of economic subsistence.

Bearing in mind that money launderers and terrorist supporters frequently explore the same gaps searched for tax evaders to escape due taxation, to improve the efficiency of the tax system, especially by enhancing transparency and the uniformization of exchange of information mechanisms could be a way out to 'kill two birds with one stone'.

These sorts of behaviours are, as largely explained above, inherently associated with the increase of social inequality, for they impede nations of due taxation and investment of huge deviated amounts of revenues on education, public health and necessary safety for its citizens. Described as the most serious crisis of capitalism since the crash of 1929, the global

[346] International Monetary Fund (2018), *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, Communications Department, Washington, D.C: IMF, cit.

financial crisis that commenced in 2007–2008 has directly impacted on the worsen of income inequality and consequently increased these sorts of criminal accomplishments.

In suchlike endeavours, it is of main importance the role enacted by jurisdictions and organisations, specially by the OECD, the FATF and the European Union, that must continue to consider changes to the standards, in light of new emerging configurations regarding the springing of innovative threats and vulnerabilities to the global financial system. Tax administrations also play a key role in the fight against, money laundering and the financing of terrorism. Globalization makes it necessary to strengthen mutual assistance and exchange of information between States, in order to obviate the negative effects of increasing and non-surveyed free-flow of capitals in the international market.

In yet another assessment, one thing remains factual: AML / CFT regulation has become a cornerstone of a denser schedule to skirmish criminals' activities, by denying lawbreakers of their ill-gotten compensations and by prosecuting those who assist in accomplishing such attempts. To enhance law-enforcement likewise plays a decisive role in crime obstruction, since the removing of financial incentive to committing offences with the trace, freeze, and confiscation of profits is crucial for reducing criminal's financial possibilities.[347]

One of the main challenges that must be addressed resides specifically in the different regulation's discrepancies among countries, that as a consequence provide a fragile milieu and enable illicit activities to take place, if not under domestic eyes, at offshores jurisdictions that provide so.

A minimum and uniform standard, in spite of nations dissimilarities, as it is already being commencing to be sorted out by worldwide organisations, is hence essential to deliver a slightest stability to the financial system as a whole.

Tax havens would incontestably undergo striking damages if financial transparency was to become an unescapably and unified pattern. From this perspective, international financial transparency is a crucial matter for the modern fiscal state to be able to deliver substantial and irrevocably changes.[348]

[347] Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, cit., pp. 553–598.
[348] Piketty, Thomas (2014), *Capital in the Twenty-First Century*, Cambridge Massachusetts: The Belknap Press of Harvard University Press, cit.

To fight terrorism and counter the laundering of assets, it is vital to have optimal information exchange and precise data, in order to afford deconstruction of organized criminality agenda.

With that knowledge in mind, it is important to note that nations alone do not possess the self-sufficiency and capability to counter entirely and effectively the harmful actions arising from globalization, which can and will be better achieved at global level. The development and improvement of severer regulations is necessary, even indispensable, but it would be innocuous to believe that it would be plainly accepted, for most countries would be implausible to adhere without sanctions.

Despite the fact that it is not clear whether the benchmarks already taken by international bodies such as the FATF, the IMF, the OECD, the G20 and the EU will result in effective outcomes, it is decisive to endure the combined efforts in order to seek a fair, efficient and above all, transparent arrangement.

In tax harmonization, the BEPS package and the MLI displays the most profound efforts to deliver a better worldwide tax environment, representing a true landmark in the advancement of the international tax regime.[349]

It should be emphasized that globalization has also produced, in contrast to the negative aspects upraised, a greater ease of interaction between countries, through the formation of economic blocs and enhancement of ties towards a common goal: sustainable and economic growth.

Financial information is the utmost important and strategic asset in confronting money laundering, terrorist financing and contending severe offences in a broader perspective. Taking into account the fact that money launderers, terrorist and other lawbreakers drill their wrongdoings globally, mainly by the relocation of illegal income from one jurisdiction to another by exploring weak legislative circumstances, financial information is imperative to tackle this variety of harmful performances in an interconnected world.

Elected as between the uppermost main concerns of the European Agenda on Security, preventing and fighting ML and TF are crucial and their progressive menaces must

[349] Avi-Yonah, Reuven S. and Xu, Haiyan (2018), *A Global Treaty Override? The New OECD Multilateral Tax Instrument and Its Limits*, 39 Mich. J. Int'l L. 155, Retrieved from: https://repository.law.umich.edu/mjil/vol39/iss2/2

be correspondingly accompanied by fast developments regarding the counter effect regulations, mainly those that enhance transparency mechanisms in the exchange of information field. [350]

In this sense, the enlargement of Exchange of Information on Request (EoIR) and the introduction of the Automatic Exchange of Information (AEoI) marked a step change in tax transparency and in the ability of tax administrations to combat offshore activities, thus its harmful ML and TF subsistent endeavours[351].

Despite its ingrained loopholes, the CRS, the FATCA and the EU Directives represent promising mechanisms in such attempt. On the other hand, of most importance of all is the establishment of a due diligence standard that delivers a better uniformization system of transparency and exchange of information.[352]

As a matter of fact, exchange of information "*as a standard, is a condition for a balanced allocation of taxing rights, since it will lead to transparency on the tax burden raised by each jurisdiction and to fair competition among the jurisdictions wanting to attract investment*"[353] and represents the very key to improve transparency and avoid the core of the problem, which is exactly the anonymity, obscurity and opacity made available by offshore jurisdictions.

In the world panorama, it is clearly perceptible that it will not be possible to exhaust money laundering and terrorist financing hazards, as new structures upraise every day exploring different weaknesses and breaches of the financial systems.

Enhancing transparency, addressing challenges and persistently tracking solutions globally is decisive if organized crime endeavours are not to become a permanent and ingrained feature of a globalization process that only promotes inequality, but also provides fairer competition in a trustful and solid financial environment, under the optimization of the fiscal efficiency.

---

[350] Quintel, Teresa (2019), *Follow the Money, If You Can – Possible Solutions for Enhanced FIU Cooperation Under Improved Data Protection Rules*, Forthcoming, ERT 1/2019, University of Luxembourg, Law Working Paper No. 001-2019, cit.
[351] Johannesen, Niels, and Gabriel Zucman (2014), *The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown*, American Economic Journal: Economic Policy, 6(1), pp. 65–91.
[352] Avi-Yonah, Reuven S. and Mazzoni, Gianluca (2018), *Due Diligence in International Tax Law*, University of Michigan, Public Law Research Paper No. 608, cit.
[353] Dourado, Ana Paula (2013), *Exchange of Information and Validity of Global Standards in Tax Law: Abstractionism and Expressionism or Where the Truth Lies*, EUI Working Paper RSCAS 2013/11, p. 4, Retrieved from: https://www.cideeff.pt/xms/files/Artigos_APD/RSCAS_2013__11..pdf

References

Bibliographic References

A

Alstadsæter, Annette; Johannesen, Niels; and Zucman, Gabriel (2017), *Tax Evasion and Inequality*, NBER working paper No. 23772.

Auerbach, Alan J. and Hines, James Jr. (2002), *Taxation and economic efficiency*, Handbook of Public Economics, in: A. J. Auerbach and M. Feldstein (ed.), Handbook of Public Economics, Edition 1, Volume 3, Chapter 21, Elsevier, pp. 1347-1421.

Avi-Yonah, Reuven S. and Mazzoni, Gianluca (2018), *Due Diligence in International Tax Law*, University of Michigan, Public Law Research Paper No. 608. Retrieved from: http://dx.doi.org/10.2139/ssrn.3198495

Avi-Yonah, Reuven S. and Xu, Haiyan (2018), *A Global Treaty Override? The New OECD Multilateral Tax Instrument and Its Limits*, 39 Mich. J. Int'l L. 155, Retrieved from: https://repository.law.umich.edu/mjil/vol39/iss2/2

B

Balakina, Olga; D'Andrea, Angelo and Masciandaro, Donato (2016), *Bank Secrecy in Offshore Centres and Capital Flows: Does Blacklisting Matter?*, Baffi Carefin Centre, Research Paper No. 2016-20, Retrieved from: http://dx.doi.org/10.2139/ssrn.2777380

Beard, Mary (2015), *SPQR: A history of ancient Rome*, London: Profile Books.

Borlini, Leonardo Sergio (2018), *Regulating Criminal Finance in the EU in the Light of the International Instruments*, Oxford University Press, Yearbook of European Law, Bocconi Legal Studies Research Paper No. 3287423, pp. 553–598, Retrieved from: https://ssrn.com/abstract=3287423

Braithwaite, John (2007), *Crime, shame and reintegration*, Cambridge: Cambridge University Press, Retrieved from http://johnbraithwaite.com/wp-content/uploads/2016/06/Crime-Shame-and-Reintegration.pdf

Buscaglia, Edgardo; William E. Ratliff, and Robert Cooter (1997), *The law and economics of development*, Greenwich, Conn: JAI Press

D

Dourado, Ana Paula (2013), *Exchange of Information and Validity of Global Standards in Tax Law: Abstractionism and Expressionism or Where the Truth Lies*, EUI Working Paper RSCAS 2013/11, Retrieved from https://www.cideeff.pt/xms/files/Artigos_APD/RSCAS_2013__11..pdf

Dourado, Ana Paula (2017), *Governação Fiscal Global*, Coimbra: Almedina.

Dourado, Ana Paula (2018), *The EU Black List of Third-Country Jurisdictions*, Intertax, Vol. 46, Issue 3.

Dourado, Ana Paula, and Wattel, Peter (2018), *Third States and External Tax Relations*, Update and elaboration, Eds. Marres, Vermeulen, Wattel), Terra / Wattel European Tax Law, Volume I – General Topics and Direct Taxation, Kluwer.

G

Gilmore, William C. (2011), *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, 4th Edition, Strasbourg: Council of Europe.

Gravelle, Jane G. (2015), *Tax Havens: International Tax Avoidance and Evasion*, USA: Congressional Research Service, Retrieved from https://fas.org/sgp/crs/misc/R40623.pdf

H

Hahn, F. H., and Arrow, Kenneth J. (1971), *Readings in the theory of growth: a selection of papers from the Review of Economic Studies*, London: MacMillan.

Hampton, Mark P., and Christensen, John (2002), *Offshore Pariahs? Small Island Economies, Tax Havens, and the Reconfiguration of Global Finance*, World Development, 30(9).

Huesecken, Birgit and Overesch, Michael (2015), *Tax Avoidance through Advance Tax Rulings – Evidence from the LuxLeaks Firms*, Retrieved from: https://ssrn.com/abstract=2664631

I

Ingrao, Bruna, and Israel, Giorgio (1990), *The Invisible hand: economic equilibrium in the history of science*, Cambridge, Mass: MIT.

J

Johannesen, Niels, and Gabriel Zucman (2014), *The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown*, American Economic Journal: Economic Policy, 6(1), pp. 65–91.

K

Keen, Michael, and David Wildasin (2004), *Pareto-Efficient International Taxation*, American Economic Review, 94(1), pp. 259-275.

Krieger, Tim and Meierrieks, Daniel (2011), *Terrorist Financing and Money Laundering*, Retrieved from: https://ssrn.com/abstract=1860069

L

Lobo, Carlos Baptista (2008), *Sectores em rede: regulação para a concorrência*, Faculdade de Direito da Universidade de Lisboa.

M

Marian, Omri Y. (2013), *Are Cryptocurrencies 'Super' Tax Havens?* Michigan Law Review First Impressions 38, Retrieved from: https://ssrn.com/abstract=2305863

Marx, Karl (1990), *Capital*, Volume 1, Penguin Books, London.

Masciandaro, Donato (2013), *Is the Anti Money Laundering Compliance Convenient?*, IDB Discussion Paper Series, Inter-American Development Bank, Washington D.C., No. 311.

McCann, Ewen and Holmes, Kevin (2010), *The Classification of Capital and Revenue in Accounting and the Definition of Income in the Market-Place*, Victoria University of Wellington – Centre for Accounting, Governance and Taxation Research Working Paper No. 73, Retrieved from: http://dx.doi.org/10.2139/ssrn.1883966

McClean, David (2002), *International Cooperation in Civil and Criminal Matters*, Oxford: Oxford University Press.

McWilliams, Douglas (2016), *The flat white economy: how the digital economy is transforming London and other cities of the future*, London: Duckworth Overlook.

Milanovic, Branko (2015), *The haves and the have-nots a brief and idiosyncratic history of global inequality*, Johanneshov: MTM.

P

Palan, Ronen (2002), *Tax havens and the commercialization of state sovereignty*, International Organisation, 56(1).

Palan, Ronen; Murphy, Richard, and Chavagneux, Christian (2010), *Tax Havens: How Globalizations Really Works*. Ithaca: Cornell University Press.

Pellegrini, Valeria; Sanelli Alessandra; and Tosti, Enrico (2016), *What do external statistics tell us about undeclared assets held abroad and tax evasion?,* Banca d'Italia Occasional Papers No. 367.

Picard, Pierre M. and Pieretti, Patrice, Bank Secrecy (2009), *Illicit Money and Offshore Financial Centers*, Paolo Baffi Centre, Research Paper No. 2009-45, Retrieved from: http://dx.doi.org/10.2139/ssrn.1411584

Picciotto, Sol (1992), *International Business Taxation, A Study in the Internationalization of Business Regulation*, London: Cambridge University Press, Weidenfeld and Nicolson, Retrieved from https://www.taxjustice.net/cms/upload/pdf/Picciotto%201992%20International%20Business%20Taxation.pdf

Picciotto, Sol (1999), *Offshore: The State as Legal Fiction*, Offshore Finance Centres and Tax Havens, Edited by Mark p. Hampton and Jason P. Abbott, Palgrave Macmillan, London, pp. 43-79.

Piketty, Thomas (2014), *Capital in the Twenty-First Century*, Cambridge Massachusetts: The Belknap Press of Harvard University Press.

Piketty, Thomas and Saez, Emmanuel (2011), *A Theory of Optimal Capital Taxation*, Working paper, Paris School of Economics and University of California at Berkeley, Retrieved from http://elsa.berkeley.edu/~saez/piketty-saez1_1_11optKtax.pdf

Prebble, Zoë M. and Prebble QC, John (2010), *The Morality of Tax Avoidance*, Creighton Law Review, Vol. 43, No. 3, Victoria University of Wellington Legal Research Paper No. 9/2012, pp. 693-745, Retrieved from https://ssrn.com/abstract=1650363

Q

Quintel, Teresa (2019), *Follow the Money, If You Can – Possible Solutions for Enhanced FIU Cooperation Under Improved Data Protection Rules*, Forthcoming, ERT 1/2019, University of

Luxembourg Law Working Paper No. 001-2019, Retrieved from: https://ssrn.com/abstract=3318299 or http://dx.doi.org/10.2139/ssrn.3318299

R

Radu, Marius (2016), *Bank Secrecy – Pillar for Performance of Tax Havens Social Economic Debates*, Volume 5, Issue 2, Retrieved from: https://ssrn.com/abstract=2890963

Rawlings, G. and Sharman, J. C. (2006), *National Tax Blacklists: A comparative Analysis*, Journal of International Taxation, Vol. 17, No. 9.

Robinson, Jeffrey (1996), *The laundrymen: inside money laundering, the world's third-largest business* (1st North American ed.), Arcade Pub.: Distributed by Little, Brown, New York.

Rodrik, Dani (2016), *Economics rules: the rights and wrongs of the dismal science*, New York: W.W. Norton and Company.

Rose, Andrew Kenan and Spiegel, Mark M. (2005), *Offshore Financial Centers: Parasites or Symbionts?*, FRB of San Francisco, Working Paper No. 2005-05, Retrieved from: http://dx.doi.org/10.2139/ssrn.725881

Rosenzweig, Adam H. (2010), *Why are There Tax Havens?* William and Mary Law Review, Vol. 52, No. 3, 2010; Washington University in St. Louis Legal Studies Research Paper No. 10-11-03. Retrieved from: https://ssrn.com/abstract=1718184

Ryan-Collins, Josh, Toby Lloyd, Laurie MacFarlane, and John Muellbauer (2017), Rethinking the economics of land and housing, London: Zed Books Ltd.

S

Savona, Ernesto U. and Riccardi, Michele et al (2017), *Assessing the risk of money laundering in Europe*, Final Report of Project IARM, Milano: Transcrime – Università Cattolica del Sacro Cuore, Retrieved from: http://www.transcrime.it/wp-content/uploads/2017/05/ProjectIARM-FinalReport.pdf

Schott, Paul Allan (2006), *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism Second Edition and Supplement on Special Recommendation IX The International Bank for Reconstruction and Development/The World Bank/The International Monetary Fund*, Retrieved from: http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf

Seagrave, Sterling (1995), *Lords of the Rim: The invisible empire of the overseas Chinese*, New York: Putnam's Sons.

Sikka, Prem (2003), *The Role of Offshore Financial Centres in Globalization*, Accounting Forum, Vol. 27, pp. 365-399, Retrieved from: http://www.taxjustice.net/cms/upload/pdf/WP03-02.pdf

Smith, Adam (1981), *The wealth of nations*, London: Dent.

Spahiu, Naim; Bajraktari, Halim and Shterbani, Shefki (2016), *Terrorism as a Threat and Challenge of Peace and Security in 21st Century*, Proceedings of the International Scientific Conference 'Contemporary Concepts of Crisis Management', Retrieved from: https://ssrn.com/abstract=3307341.

Stiglitz, Joseph (1995), *Role of Government in the Contemporary World*, Paper presented at the IMF Conference on Growth and Income Distribution, Washington, DC.

Stiglitz, Joseph E. (2013), *The price of inequality: How today's divided society endangers our future*, New York: W.W. Norton and Company.

Stiglitz, Joseph E. (2014), *Reforming Taxation to Promote Growth and Equity*, Roosevelt Institute, White Paper, Retrieved from: http://rooseveltinstitute.org/wp-content/uploads/2014/05/Stiglitz_Reforming_Taxation_White_Paper_Roosevelt_Institute.pdf

T

Trebilcock, M. J. (1995), *What makes poor countries poor?: the role of institutional capital in economic development*, Toronto: Canadian Law and Economics Association c/o Faculty of Law, University of Toronto.

U

Unger, Brigitte and Ferwerda, Joras (2008), *Regulating Money Laundering and Tax Havens: The Role of Blacklisting*, Utrecht School of Economics, Tjalling C. Koopmans Research Institute, Discussion Paper Series 08-12, Retrieved from: https://www.uu.nl/sites/default/files/rebo_use_dp_2008_08-12.pdf

Unger, Brigitte and Van der Linde, Daan (2013), *Money laundering regulation: from Al Capone to Al Qaeda*, Research Handbook on Money Laundering, Elgar Original Reference, pp. 19-32.

Unger, Brigitte and Van der Linde, Daan (2013), *Research Handbook on Money Laundering*, Elgar Original Reference, pp. 3-16.

Unger, Brigitte and Verbeken, Dirk (2017), *Offshore activities and money laundering: recent findings and challenges*, Directorate General for Internal Policies Policy Department A: Economic and Scientific Policy, EU: European Parliament, pp. 16-17, Retrieved from: http://www.europarl.europa.eu/cmsdata/115250/PANA%202016-04%20ST%20Offshore%20activities%20Final.pdf

Documents of International Bodies

European Parliament

European Parliament (2017), *The Impact of Schemes revealed by the Panama Papers on the Economy and Finances of a Sample of Member States*, Directorate General for Internal Policies, Policy Department D: Budgetary Affairs, Authors: Blomeyer and Sanz et al, Brussels: European Union, PE 572.717, p. 24, Retrieved from http://www.europarl.europa.eu/RegData/etudes/STUD/2017/572717/IPOL_STU(2017)572717_EN.pdf

European Parliament (2017), *Understanding the rationale for compiling 'tax haven' lists*, European Parliamentary Research Service, Members' Research Service, Author: Cécile Remeur, Brussels: European Union, PE 614.633, Retrieved from http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/614633/EPRS_BRI(2017)614633_EN.pdf

European Parliament (2018), *Listing of tax havens by the EU*, European Parliamentary Research Service, Members' Research Service, Author: Cécile Remeur, Brussels: European Union, PE 621.872, Retrieved from http://www.europarl.europa.eu/cmsdata/147404/7%20-%2001%20EPRS-Briefing-621872-Listing-tax-havens-by-the-EU-FINAL.PDF

European Union

European Union (2018), *Handbook on the compilation of statistics on illegal economic activities in national accounts and balance of payments*, Luxembourg: Publications Office of the European Union, Retrieved from https://ec.europa.eu/eurostat/documents/3859598/8714610/KS-05-17-202-EN-N.pdf/eaf638df-17dc-47a1-9ab7-fe68476100ec

Financial Action Task Force

FATF (2001-2008), *FATF IX Special Recommendations*, FATF, Paris, Retrieved from https://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20-%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf, Also referred as: FATF 9 Special Recommendations.

FATF (2012-2018), *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, FATF, Paris, France, Retrieved from www.fatf-gafi.org/recommendations.html, Also referred as: FATF Recommendations.

FATF (2013-2019), *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML / CFT Systems*, updated February 2019, FATF, Paris, France, Retrieved from https://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html

FATF (2015), *Emerging Terrorist Financing Risks*, FATF, Paris, Retrieved from www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html

FATF (2015), *Financing of the terrorist organisation Islamic State in Iraq and the Levant (ISIL)*, FATF, Paris, Retrieved from: http://www.fatf-gafi.org/media/fatf/documents/reports/Financing-of-the-terrorist-organisation-ISIL.pdf

FATF (2016), *Committee of Inquiry into Money Laundering, Tax Avoidance and Tax Evasion, Public hearing anti-money laundering and tax evasion: who sets the rules and how?* Remarks by FATF Executive Secretary, David Lewis, FATF, Paris, Retrieved from http://www.europarl.europa.eu/cmsdata/112269/Replies_FATF_en.pdf

FATF (2018), *FATF Report to G20 Finance Ministers and Central Bank Governors*, FATF, Paris, France, Retrieved from https://www.fatf-gafi.org/publications/fatfgeneral/documents/report-g20-fm-cbg-july-2018.html

FATF (2018), *Financing of Recruitment for Terrorist Purposes*, FATF, Paris, Retrieved from www.fatf-gafi.org/publications/methodsandtrends/documents/financing-recruitment-terrorist-purposes.html

FATF (2018), *Professional Money Laundering*, FATF, Paris, France, Retrieved from https://www.fatf-gafi.org/publications/methodandtrends/documents/professional-money-laundering.html

FATF (2019) *FATF Public Statement*, FATF, Paris, France. Retrieved from http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2019.html

FATF (2019), *Improving Global AML / CFT Compliance: On-going Process*, FATF, Paris, France, Retrieved from http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2019.html

International Monetary Fund

International Monetary Fund (1999), *Offshore Banking: An Analysis of Micro- and Macro-Prudential Issues*, Prepared by Luca Errico and Alberto Musalem, IMF Working Paper, Retrieved from https://biblio.parlament.ch/e-docs/360550.pdf

International Monetary Fund (2000*), Offshore Financial Centers*, IMF Background Paper, Prepared by the Monetary and Exchange Affairs Department, Retrieved from https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm#II

International Monetary Fund (2003), *External Debt Statistics: Guide for Compilers and Users*, Appendix III, Glossary, Washington DC: IMF, Retrieved from https://stats.oecd.org/glossary/detail.asp?ID=5988

International Monetary Fund (2005), *Regulatory Frameworks for Hawala and Other Remittance Systems*, Washington, D.C: IMF Publication Services.

International Monetary Fund (2007), *Concept of offshore financial centres: In search of an operational definition*, Washington, D.C.: International Monetary Fund, Monetary and Capital Markets Dept, Prepared by Zoromé, Ahmed, p. 4, Retrieved from: https://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf

International Monetary Fund (2007), *Concept of Offshore Financial Centers: In Search of an Operational Definition*, IMF Working Paper, Monetary and Capital Markets Department, Prepared by Ahmed Zoromé. Authorized for distribution by R. Barry Johnston, p. 7, Retrieved from https://www.imf.org/external/pubs/ft/wp/2007/wp0787.pdf

International Monetary Fund (2014), *Staff Assessments on Offshore Financial Centres (OFCs)*, Last Update: November 20, 2014, Retrieved from https://www.imf.org/external/NP/ofca/OFCA.aspx

International Monetary Fund (2018), *The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, Communications Department, Washington, D.C: IMF, Retrieved from https://www.imf.org/en/About/Factsheets/Sheets/2016/08/01/16/31/Fight-Against-Money-Laundering-the-Financing-of-Terrorism

Organisation for Economic Co-operation and Development

OECD (1998), *Harmful Tax Competition: An Emerging Global Issue*, OECD Publishing, Paris, Retrieved from https://dx.doi.org/10.1787/9789264162945-en, Also referred as: 1998 OECD Report.

OECD (2001), *Corporate Tax Incentives for Foreign Direct Investment*, OECD Tax Policy Studies No. 4, Paris: OECD.

OECD (2008), *OECD Benchmark Definition of Foreign Direct Investment*, Fourth Edition, OECD Publishing, Paris, Retrieved from https://www.oecd.org/daf/inv/investmentstatisticsandanalysis/40193734.pdf

OECD (2009), *Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors*, OECD Publishing, Retrieved from https://www.oecd.org/ctp/crime/money-laundering-awareness-handbook-for-tax-examiners-and-tax-auditors.pdf

OECD (2011), *The Era of Bank Secrecy is Over*, Retrieved from http://www.oecd.org/tax/exchange-of-tax-information/48996146.pdf

OECD (2012), *Automatic Exchange of Tax Information, What It Is, How It Works, Benefits, What Remains to Be Done*, Retrieved from: https://www.oecd.org/ctp/exchange-of-tax-information/automatic-exchange-of-information-report.pdf

OECD (2015), *Developing a Multilateral Instrument to Modify Bilateral Tax Treaties*, Action 15 – 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, Retrieved from http://dx.doi.org/10.1787/9789264241688-en,

OECD (2015), *Explanatory Statement*, 2015 Final Reports, OECD/G20, Base Erosion and Profit Shifting Project, Paris: OECD Publishing, Retrieved from https://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf

OECD (2017), *Model Tax Convention on Income and on Capital: Condensed Version 2017*, OECD Publishing, Retrieved from https://doi.org/10.1787/mtc_cond-2017-en

OECD (2018), *Automatic Exchange of Information Implementation Report 2018,* Global Forum on Transparency and Exchange of Information for Tax Purposes, Retrieved from https://www.oecd.org/tax/transparency/AEOI-Implementation-Report-2018.pdf

Organisation for Economic Co-operation and Development and Council of Europe

OECD and Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Retrieved from https://dx.doi.org/10.1787/97892641156606-en

Tax Justice Network

Tax Justice Network (2018), *Narrative Report on Switzerland*, Retrieved from http://www.financialsecrecyindex.com/PDF/Switzerland.pdf

United Nations

United Nations (1998), *Report on Financial Havens, Bank Secrecy, and Money Laundering*, United Nations Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, Retrieved from https://www.amnet.co.il/joomla/attachments/UN-FINANCIAL%20HAVENS%20laundering.pdf

United Nations (2002), *Manual on Statistics of International Trade in Services*, United Nations Publications: New York.

Jurisprudence

Egyptian Delta Land and Investment Co. Ltd. v. Todd, (1929), 14 T.C. 119

Legislation

Council of the European Union

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p. 1–12, In force, Retrieved from http://data.europa.eu/eli/dir/2011/16/oj, Also referred as: 2011 Administrative Cooperation Directive.

European Union

Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390, In force, Retrieved from http://data.europa.eu/eli/treaty/tfeu_2012/oj, Also referred as: TEU and TFEU, respectively.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community. Signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007, p. 1–271, In force, Retrieved from http://data.europa.eu/eli/treaty/lis/sign, Also referred as: 2009 Lisbon Treaty.

Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 359, 16.12.2014, p. 1–29, In force, Retrieved from http://data.europa.eu/eli/dir/2014/107/oj, Also referred as: 2014 AEoI Directive.

Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, OJ L 336, 27.12.1977, p. 15–20, No longer in force, Date of end of validity: 01/01/2013; Repealed by Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation, Retrieved from http://data.europa.eu/eli/dir/1977/799/oj, Also referred as: 1977 Mutual Assistance Directive

Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, OJ L 166, 28.6.1991, p. 77–82, No longer in force, Date of end of validity: 14/12/2005; Repealed by Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005, Retrieved from http://data.europa.eu/eli/dir/1991/308/oj, Also referred as: First AML Directive.

Council Framework Decision of 13 June 2002 on combating terrorism, OJ L 164, 22.6.2002, p. 3–7, No longer In force, Date of end of validity: 19/04/2017; Repealed and replaced by Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017, Retrieved from http://data.europa.eu/eli/dec_framw/2002/475/oj

Council of the European Union, Council Conclusions on the EU list of non-cooperative jurisdictions for tax purposes, Brussels, 5 December 2017 (OR. en), 15429/17, FISC 345, ECOFIN 1088, Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017XG1219(01)andfrom=EN, Also referred as: December 2017 EU list of non-cooperative jurisdictions

Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Brussels, 22 November 2018 (OR. en), 6237/4/18 REV 4, FISC 69, ECOFIN 122, Retrieved from https://data.consilium.europa.eu/doc/document/ST-6237-2018-REV-4/en/pdf

Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting the de-listing of certain jurisdictions, Brussels, 12 January 2018 (OR. en), 5086/18, LIMITE, FISC 9, ECOFIN 7, Retrieved from http://data.consilium.europa.eu/doc/document/ST-5086-2018-INIT/en/pdf

Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of two jurisdictions, Brussels, 8 May 2018 (OR. en), 8304/1/18, REV 1, LIMITE, FISC 178, ECOFIN 356, Retrieved from https://www.consilium.europa.eu/media/35569/st_8304_2018_rev_1_en.pdf

Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Brussels, 11 October 2018 (OR. en), 6237/3/18, REV 3, FISC 69, ECOFIN 122, Retrieved from https://data.consilium.europa.eu/doc/document/ST-6237-2018-REV-3/en/pdf

Council of the European Union, The EU list of non-cooperative jurisdictions for tax purposes, Report by the Code of Conduct Group (Business taxation) suggesting amendments to the Annexes of the Council conclusions of 5 December 2017, including the de-listing of one jurisdiction, Brussels, 31 October 2018 (OR. en), 13352/1/18, REV 1, FISC 423, ECOFIN 949, Retrieved from http://data.consilium.europa.eu/doc/document/ST-13352-2018-REV-1/en/pdf

Council of the European Union, The European Union Counter-Terrorism Strategy, 14469/4/05 REV 4, Brussels, 30 November 2005, Retrieved from http://register.consilium.europa.eu/doc/srv?l=ENandf=ST%2014469%202005%20REV%204

Council of the European Union, The revised EU list of non-cooperative jurisdictions for tax purposes – Council conclusions, Brussels, 12 March 2019 (OR. en), 7441/19, FISC 169, ECOFIN 297, Retrieved from https://data.consilium.europa.eu/doc/document/ST-7441-2019-INIT/en/pdf, Also referred as: March 2019 EU list of non-cooperative jurisdictions for tax purposes.

European Commission

European Commission, Communication from the Commission to the European Parliament and the Council on an External Strategy for Effective Taxation, Brussels, 28.1.2016, COM (2016) 24 final, Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0024andfrom=EN

European Parliament and Council of the European Union

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73–117, In force, Retrieved from http://data.europa.eu/eli/dir/2015/849/oj, Also referred as: Fourth AML / CFT Directive.

Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. OJ L 119, 4.5.2016, p. 132–149, In force, Retrieved from http://data.europa.eu/eli/dir/2016/681/oj

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, PE/72/2017/REV/1, OJ L 156, 19.6.2018, p. 43–74, In force, Retrieved from http://data.europa.eu/eli/dir/2018/843/oj, Also referred as: 5th AML / CFT Directive.

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration, OJ L 344, 28.12.2001, p. 76–82, No longer in force, Date of end of validity: 14/12/2005; Implicitly repealed by Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005, Retrieved from http://data.europa.eu/eli/dir/2001/97/oj.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15–36, No longer in force, Date of end of validity: 25/06/2017; Repealed and replaced by Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, Retrieved from http://data.europa.eu/eli/dir/2005/60/oj, Also referred as: Third AML / CFT Directive

Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance), OJ L 335, 17.12.2009, p. 1–155, In force, Retrieved from http://data.europa.eu/eli/dir/2009/138/oj

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance, OJ L 176, 27.6.2013, p. 338–436, In force, Retrieved from http://data.europa.eu/eli/dir/2013/36/oj

United Nations

United Nations, The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Retrieved from http://www.unodc.org/pdf/convention_1988_en.pdf, Also referred as: 1988 UN Drugs Convention.

United Nations, Conference of the Parties to the United Nations, Convention against Transnational Organized Crime, Fourth session, Vienna, 8-17 October 2008, CTOC/COP/2008/CRP.14, Retrieved from https://www.unodc.org/documents/treaties/COP2008/crp14.pdf

United Nations General Assembly

United Nations, General Assembly, International Convention for the Suppression of the Financing of Terrorism, Adopted by the General Assembly of the United Nations in resolution 54/109, 9 December 1999, Retrieved from http://www.un.org/law/cod/finterr.htm, Also referred as: 1999 UN International Convention for the Suppression of the Financing of Terrorism.

United Nations, General Assembly, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, Resolution adopted by the General Assembly, Twentieth special session, A/RES/S-20/2, 21 October 1998, Retrieved from https://www.unodc.org/documents/commissions/CND/Political_Declaration/Political_Declaration_1998/1998-Political-Declaration_A-RES-S-20-2.pdf, Also referred as: 1998 UN Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem.

United Nations, General Assembly, Resolution 58/6, Strengthening international cooperation in preventing and combating illicit financial flows linked to drug trafficking, from the anti-money-laundering perspective, Retrieved from https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/2015_Resolutions/Resolution_58_6.pdf

United Nations, General Assembly, The United Nations Global Counter-Terrorism Strategy, Resolution adopted by the General Assembly, Sixtieth session, A/RES/60/288, 8 September 2006, Retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/288, Also referred as: 2006 UN Nations Global Counter-Terrorism Strategy.

United Nations, General Assembly, United Nations Convention against Transnational Organized Crime, Resolution adopted by the General Assembly, Fifty-fifth session, A/RES/55/25, 8 January 2001, Retrieved from https://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf, Also referred as: 2001 UN Convention against Transnational Organized Crime.

United Nations, General Assembly, Uniting against terrorism: recommendations for a global counter-terrorism strategy, Report of the Secretary-General. Sixtieth session, A/60/825, 27 April 2006, Retrieved from https://undocs.org/A/60/825

United Nations Office on Drugs and Crime

United Nations, Office on Drugs and Crime, Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem, New York, 2009, Retrieved from https://www.unodc.org/documents/ungass2016/V0984963-English.pdf, Also referred as: 2009 UN Political Declaration and Plan of Action on International Cooperation

United Nations, Office on Drugs and Crime, United Nations Convention against Corruption (UNCAC), New York, 2004, Retrieved from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf, Also referred as: 2005 UN Convention against Corruption.

United Nations Security Council

United Nations, Security Council, Resolution 1373, Adopted by the Security Council at its 4385th meeting, S/RES/1373, 28 September 2001, Retrieved from https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf, Also referred as: UN Security Council Resolution 1373.

United States of America

United States of America, Bank Secrecy Act or the Currency and Foreign Transactions Reporting Act, Public Law 91-508, 91st Congress, October 26, 1970, Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-84/pdf/STATUTE-84-Pg1114-2.pdf, Also referred as: 1970 Bank Secrecy Act.

United States of America, Department of Treasury, National Terrorist Financing Risk Assessment, Washington, 2015, Retrieved from https://home.treasury.gov/system/files/136/2018ntfra_12182018.pdf

United States of America, Money Laundering Control Act, Public Law 99-570, 99th Congress, October 27, 1986, Retrieved from https://www.govinfo.gov/content/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf, Also referred as: 1986 Money Laundering Control Act.

GENERAL PLAN

PART I

INTRODUCTION

CHAPTER 1 – A GENERAL BACKGROUND ON MONEY LAUNDERING, TERRORIST FINANCING AND OFFSHORE JURISDICTIONS

PART II

MONEY LAUNDERING AND GLOBAL TERRORISM FINANCING

CHAPTER 1 – MONEY LAUNDERING

CHAPTER 2 – GLOBAL TERRORISM FINANCING

CHAPTER 3 – AML / CFT COMPLIANCE ARCHITECTURE

PART III

OFFSHORE JURISDICTIONS

CHAPTER 1 – AN OFFSHORE JURISDICTION ASSESSMENT

CHAPTER 2 – MONITORING THE GREY ZONE

PART IV

THE PRISM OF FISCAL EFFICIENCY

CHAPTER 1 – UNDERSTANDING THE FISCAL EFFICIENCY PROBLEM

CHAPTER 2 – PREVENTING MONEY LAUNDERING AND GLOBAL TERRORISM FINANCING THROUGH OFFSHORES JURISDICTIONS UNDER THE PRISM OF FISCAL EFFICIENCY

CHAPTER 3 – ASSESSING BREACHES AND TRACING SOLUTIONS

PART V

CONCLUSIONS